IOWA PROTECTION AND ADVOCACY SERVICES

950 Office Park Road
Suite 221
West Des Moines, IA
50265

Telephone
515.278.2502

Toll Free
1.800.779.2502

FAX:
515.278.0539

TTY
515.278.0571

Toll Free TTY
1.866.483.3342

E-mail:
info@ipna.org

November 16, 2006

MEMORANDUM TO:

Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Services Funding Interim Study Committee

FROM: Sylvia W. Piper, Executive Director
Iowa Protection and Advocacy Services, Inc.

RE: White Paper, October, 2006

Enclosed for your review is a copy of Iowa Protection and Advocacy Services, Inc.'s White Paper, Identifying Problems and Presenting Solutions for Determinations and Appeals within Disability Services Management under the County System. The White Paper will be also be provided to the Governor Elect, Lt. Governor Elect, Members of the 2007 Iowa General Assembly, Iowa Department of Human Services and other relevant agencies as well as officials who share responsibility for the concerns contained therein.

The White Paper was prepared due to the exceedingly high rate of contacts to Iowa Protection and Advocacy Services, Inc. from individuals with disabilities, their guardians, families and providers of services requesting assistance with reductions and terminations of community-based services. Complaints of service reduction and terminations of services to our agency steadily increase. As you will note, the focus of the White Paper addresses the problems encountered when the individual living with a disability challenges the decision of the CPC to reduce or terminate community-based services.

The harm imposed on Iowans living with disabilities as a result of county funding cuts is beyond measure as they lose their support services enabling them to live and work in the community. They are as negatively impacted as any of us would be under similar circumstances. Added to those tragic situations are the additional complications of the inefficient county system as addressed in the enclosed White Paper, October 2006.

Should you have questions or desire additional information, please feel free to contact Iowa Protection and Advocacy Services, Inc.

WHITE PAPER

Identifying Problems and Presenting Solutions for Determinations and Appeals within Disability Services Management under the County System

Iowa Protection and Advocacy Services

October 2006

TABLE OF CONTENTS

EXHIBIT LIST

1.1 Notice of Decision, Sac County - Board of Supervisors

1.2 Notice of Decision, Sac County - Board of Supervisors

1.3 Notice of Decision, Marion County - Board of Supervisors

1.4 Notice of Decision, Calhoun County - CPC

1.5 Correspondence from Calhoun County CPC

1.6 Notice of Decision, Calhoun County - CPC

1.7 Notice of Decision, Sac County - CPC

1.8 Notice of Decision, Sac County - CPC

1.9 Notice of Decision, Sac County - CPC

1.10 Notice of Decision, Sac County - CPC

1.11 Notice of Decision, Fayette County - CPC

2. Iowa Program for Assistive Technology (IPAT) - County Management Plans for MH/DD Services Policy and Procedures Manuals Best Practices Materials

3. MH/DD County Management Plan Grid

4. Salcido ex rel. Gilliland v. Woodbury County, Iowa, 119 F. Supp.2d 900 (N.D. Iowa 2000)

5. Ward v. Monroeville, 409 U.S. 57 (1972)

6. Sac/Ida/Calhoun County Mental Health Stakeholder Group Meeting – Minutes dated September 5, 2006

7 Iowa Admin. Code r. 441-25.13(1)(f) (2006)

8. Iowa Admin. Code r. 441-25.13(2)(c) (2006)

9. Iowa Code § 331.439(1)(b)(1)-(3) (2005)

10. Iowa Code § 17A.2(1) (2005)

11. Iowa R. Civ. P. 1.1401

12. Iowa Admin. Code r. 441-25.13(2)(j) (2006)

13. Iowa Code § 222.60 (2005)

14. Iowa Admin. Code r. 441-7.1 (2006)

15. Iowa Admin. Code r. 441-7.5(2)(d)(2) (2006)

16. Iowa Admin. Code r. 441-83 (2006) (Need for Services)

17. Iowa Admin. Code r. 441-83 (2006) (Appeal Rights)

INTRODUCTION

Through its advocacy efforts this past year, Iowa Protection and Advocacy Services, Inc. (Iowa P&A) has addressed consumer issues involving the reductions and terminations of community-based services. During its research into the content and impact of these decisions, the agency examined what service decisions are being made at the county level, how appeal information is provided to the consumer and what appeal information is provided to the consumer when an adverse decision is challenged.

Although an intensive study exploring the impact of county funding reductions on the community-based human service sector is warranted, the intended purpose of this paper is not to determine whether the state and/or counties have the capability, stability, or funds to administer community-based services. The intent of this paper is more narrowly focused on the issues of service decisions being made at the county level by Central Point of Coordination Administrators (CPC) and how the appeal process is facilitated or hindered when consumers challenge an adverse notice of decision relating to community-based services (whether the reduction/termination involves 100% county funded or combined funding services). This paper is concerned with an examination of the county plan systems' procedures with respect to service decision making authority and the appeal process as it is provided to consumers and the public.

Iowa P&A has a history of focusing its annual priorities on community integration. The community-based sector is the mechanism by which individuals with disabilities and mental illnesses will be afforded the opportunity to participate in activities that affect their daily lives. In 1986, Iowa P&A filed a state-wide class action lawsuit, Conner v. Branstad, 839 F. Supp. 1346 (S.D. Iowa 1993), on behalf of all current or future residents of Glenwood and Woodward Resource Centers (formerly designated as State Hospital Schools). The suit was based on the legal principle that individuals, regardless of the severity of their disabilities, have a constitutionally protected interest in liberty and a right to the least restrictive living environment consistent with qualified professional judgment.

This action was originally filed on behalf of Evert Conner, a resident of Glenwood for nearly 18 years. During the last 11 years of his residency, the institution had recommended that he move into the community. However, due to Mr. Conner's severe physical disabilities and the limitations of the state's delivery system for services at the time, it was difficult to find a placement for him. In 1994, Judge Mark Bennett approved the Conner Consent Decree which held that the Iowa Department of Human Services would develop and implement a five year plan in order to facilitate the appropriate supports and services necessary for community placement of the lawsuit's class members.

The human service delivery system in Iowa has evolved since 1994 and furthermore, consumers in this state who are institutionalized or under threat of being

institutionalized have garnered additional legal support and protection through Olmstead v. L.C., 527 U.S. 581 (1999). The Olmstead decision addressed both the issue of unnecessary institutionalization and state responsibility to provide services in the community. The action was brought on behalf of two Georgia women who had both mental retardation and mental illness. Similar to Evert Conner, they requested community placement. The Supreme Court opinion in Olmstead clearly reflects that the state must provide a continuum of services in the community to accommodate individuals who are at risk of being institutionalized.

The positive developments the State and counties have made this past decade in the commitment to providing comprehensive, integrated community-based programs may be undermined by the manner in which the counties administer disability services under the county system. Even though it is primarily the content of the notice of decisions (NODs) and the appeal processes that are examined herein, it must be continually kept in mind that blind, unilateral reductions and terminations of services undermine the spirit and intent of the community-based infra-structure. Such decisions result in threats of institutionalization or re-institutionalization. The State of Iowa and all 99 counties have a vested interest in the stability of continuation of community-based services and should provide them in a manner that neither infringes upon nor violates an individual's right to due process.

SECTION I

The Law

Iowa P&A has identified the following law as governing services determinations and the corresponding appeal processes when the funding for services is either 100% county responsibility or when the responsibility for services is funded by county and federal dollars.

A. 100% County Funded Services

The federal district court decision in Salcido ex rel. Gilliland v. Woodbury County, Iowa, 119 F. Supp.2d 900 (N.D. Iowa 2000) provides precedent that a county board of supervisors shall not be the final decision maker at the county level as to services for consumers with disabilities. The case further held that those decisions must be made by an impartial body, and **the county boards of supervisors are by definition a partial body with a conflict of interest.**

Following Salcido, the Iowa Administrative Code was amended to reflect the court's decision as to the role of the board of supervisors. The language in the Administrative Code reflects the changes that were made to the code in response to this case law:

> The county shall develop and implement a process for appealing the decisions of the county or its agent. This appeal process shall be based on objective criteria, specify time frames, provide for notification in accessible formats of the decisions to all parties, and provide some assistance to consumers in using the process. ***Responsibility for the final administrative decision on an appeal shall not rest with the county board of supervisors.*** If the appellant has state case status, responsibility for the final administrative decision on an appeal shall rest with the department, following the procedures established in 441—Chapter 7.

Iowa Admin. Code r. 441-25.13(2)(j) (2006) (emphasis added).

The Department of Human Services (DHS) is charged with oversight of the county plans. **Iowa Code § 331.439(1)(b)(1) (2005)** governs this responsibility and directs counties to submit their plan to DHS for approval of any amendments to the county's management plan. **The Iowa Admin. Code r. 441-25.13 (2006)** mandates that counties describe system management and plan administration in a policies and procedures manual. As referenced above, the plan administration section further compels the counties to develop and implement a process for appealing county decisions. **Iowa Admin. Code r. 441-25.13(2)(j) (2006).**

For individuals receiving MR Waiver services, Iowa Code mandates some services be fully county funded, upon diagnosis and evaluation establishing eligibility, as long as the individual is not a "state case." **Iowa Code § 222.60 (2005).**

Lastly, if consumers choose to appeal adverse decisions determined at the county's final administrative level, their recourse would be to petition for a writ of certiorari in district court. **Iowa R. Civ. P. 1.1401.**

B. Services Utilizing Combined County and Federal Funds

The regulations and Iowa code outline an individual's right to appeal an adverse ruling when the services are funded by both county and federal dollars. The Administrative Code provides language depicting the appeal rights for each waiver. However, the appeal process is not identical in each waiver. Hence, the type of waiver will dictate the terms and procedures for the appeal process.

- **HCBS Waiver Appeal Process**

All of the administrative code sections listed below similarly state:

> Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

Iowa Admin. Code r. 441-83.9 (2006) (HCBS III and Handicapped Waiver Services – Appeal Process); **Iowa Admin. Code r. 441-83.29 (2006)** (HCBS Elderly Waiver Services – Appeal Process); **Iowa Admin. Code r. 441-83.49 (2006)** (HCBS AIDS/HIV Waiver Services – Appeal Process); **Iowa Admin. Code r. 441-83.109 (2006)** (HCBS Physical Disability Waiver Services – Appeal Process); **Iowa Admin. Code r. 441-83.129 (2006)** (HCBS Children's Mental Health Waiver Services – Appeal Process).

However, two other waivers contain additional language which requires the counties to be involved in the appeal process when the county has legal payment responsibility. The language in the Mental Retardation (MR) and Brain Injury (BI) Waivers duplicate the above referenced appeal process and further include language which states:

> The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2)*"j."* If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department pursuant to rule 441—83.69(249A).

Iowa Admin. Code r. 441-83.69 (2006) (HCBS MR Waiver Services – Appeal Process); **Iowa Admin. Code r. 441-83.89 (2006)** (HCBS Brain Injury Waiver Services – Appeal Process).

- **Appeals and Hearings**

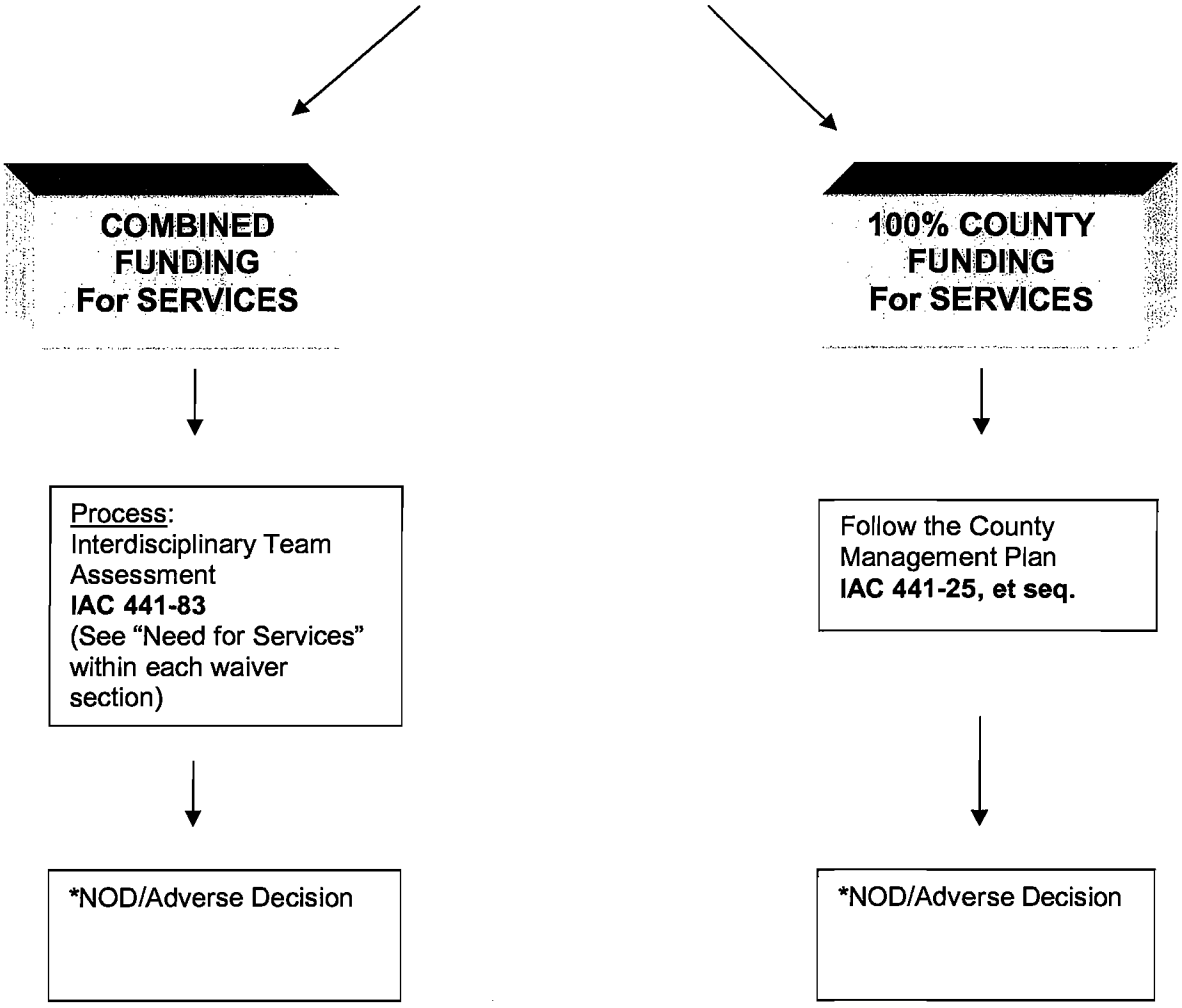
Iowa Admin. Code r. 441-7.1 (2006) – "Reconsideration" is defined as a review process that must be exhausted before an appeal hearing is granted. Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

Iowa Admin. Code r. 441-7.5 (2006) – The right to appeal. Section 7 in general applies to contested case proceedings conducted by or on behalf of the department. Section 7.5 defines the hearing process and expressly states that "any person or group of persons may file an appeal with the department concerning any issue. The department shall determine whether a hearing shall be granted." Section 7.5(2)(d)(2) further expresses that an appeal is filed prematurely if the appellant has not exhausted the reconsideration process.

Iowa Admin. Code r. 441-7.20 (2006) – Right of Judicial Review (of the actions of DHS). The director's final decision shall advise the appellant of his/her right to judicial review by the district court.

Iowa Code § 17A.20 (2005) – The appeal process from an administrative agency ruling states that an aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court under this chapter by appeal. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved.

CPC DECISIONS FOR SERVICES



*See Figure 2 for description of appeal process following CPC NOD/adverse decision.

FIGURE 1

APPEAL PROCESS FOR ADVERSE DECISIONS FOR SERVICES

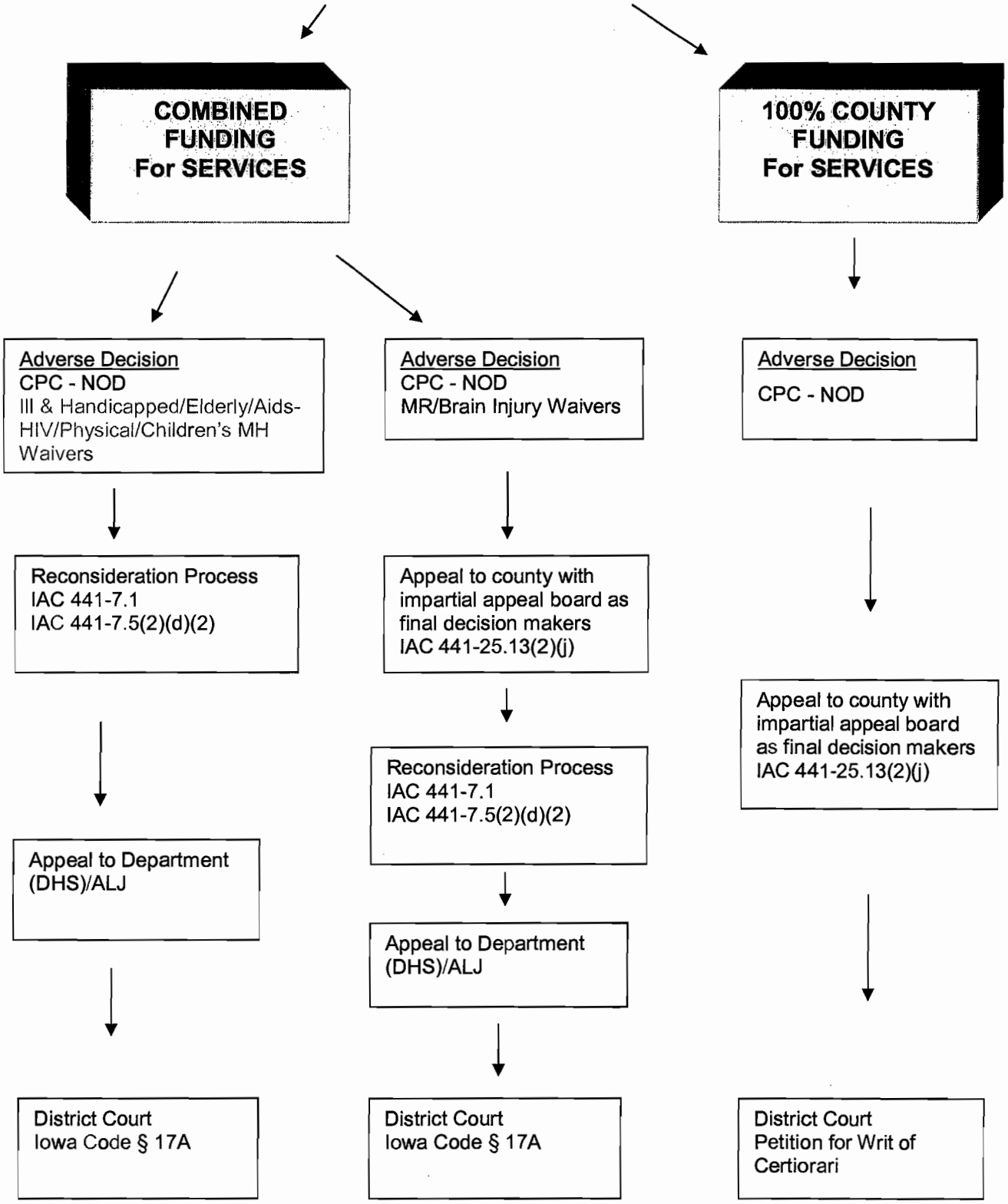


FIGURE 2

SECTION II

Factual Examples

Iowa P&A has identified areas where counties' processes for service determinations and appeals are inconsistent with current law as listed in Section I. The following factual descriptions were compiled from county Central Point of Coordination (CPC) Administrators and Board of Supervisors' Notice of Decisions.

A. 100% County Funded Services

1. Sac County consumers were informed that the appeal process at the county level had been exhausted once the Sac County Board of Supervisors had rendered their decisions. The appeal Notice of Decisions (NOD) stated:

> You have exercised your final stage of appeal at the county level. The Board of Supervisors makes the final administrative decision at the county level, except for "state cases" and Department of Human Services Program matters. If you disagree with the Board of Supervisors' decision regarding service, supports or funding, you can appeal to the Iowa District Court in and for Sac County. Appeals from the Board of Supervisors' decision shall be allowed within the time and by the manners and procedures established under the Iowa Administrative Procedures Act, Chapter 17A, Code of Iowa [sic]

[Exhibits 1.1 and 1.2].

2. A consumer in Marion County was receiving 100% county funded services including case management, sheltered work and assisted living. In February 2005, the consumer received a NOD from the Marion County CPC that Marion County would no longer be providing funding for his MH/DD services as his therapist recommended a higher level of care. The consumer appealed this decision following the appeal process noted on the bottom of the NOD. A hearing was held before the Marion County Board of Supervisors and on March 29, 2005, the consumer received the written decision of the Board of Supervisors upholding the decision of the CPC. Marion County was willing to fund this consumer at a higher level of care only. On the bottom of the Board of Supervisors' letter was an appeal process which stated the following:

> You are hereby notified that you have a right to appeal the Board's decision to the Iowa District Court. Such an appeal must be made by filing a petition for judicial review

> in either the Polk County District Court, or the District Court for the county in which the Applicant resides, within thirty (30) days after the issuance of this decision.

[Exhibit 1.3].

Marion County at the time of this appeal in 2005 had the Board of Supervisors as the final decision maker at the county level. In addition, the notice directs the consumer to file the appeal either in Polk County or Marion County.

3. The University of Iowa Clinical Law Program, in conjunction with the Iowa Program for Assistive Technology developed best practice materials as a tool to aid the counties in how they can best assist the consumers during the decision making and appeal process. To the best of knowledge and belief, the best practice materials were compiled *prior* to the Salcido decision and the subsequent change in Administrative Code regulations. Iowa Admin. Code r. 441-25.13(2)(j) (2006). Iowa P&A obtained a copy of the County Management Plans for MH/DD Services Policy and Procedures Manuals Best Practices Materials from the DHS website. **[Exhibit 2].** The section titled Third Stage Appeal, describes the appeal process whereby decisions are made by an Appeals Committee. Directly thereafter, the consumer is advised that "any appeal complaint regarding the Appeals Committee decision will be heard by the County Board of Supervisors." **[Exhibit 2, Page 21].** All counties who choose to adopt or adapt these best practice materials including this section will have a process which places the Board of Supervisors as the final decision maker at the county level. Given the change in pertinent Iowa case law and regulations, such a process does not comport with current law in the State of Iowa.

B. Services Paid with Combined County and Federal Funds

1. A consumer received a NOD from the CPC for Calhoun County which provided in pertinent part:

> Calhoun County is decreasing your Vocational Funding at ... from 5 full days to 3 full days. This decision is effective September 1, 2006. This decision is due to an inadequate amount of revenue within the Calhoun County Mental Health Budget. This decrease in funding is necessary to work towards obtaining a positive fund balance. **This decision was made without the input of your entire interdisciplinary team.**

[Exhibit 1.4]. (emphasis added).

This NOD contained a Right of Appeal/Appeal Process requiring the consumer to notify the CPC within fourteen (14) days of intent to appeal. The NOD included no other appeal process information. On August 7, 2006, the family members of the consumer responded by writing a letter requesting an appeal to the attention of the Calhoun County CPC Administrator.

Approximately 10 days later, the consumer received a written response from the CPC. **[Exhibit 1.5].** The letter provided the consumer with the following information:

- The consumer's request for an appeal was not granted.
- The NOD was rescinded.
- The Targeted Case Manager, as a result of an interdisciplinary re-assessment occurring after the issuance of the NOD, was unable to justify the same level of services.

Even though services were reduced, this correspondence did not provide the consumer with an option to appeal nor did it serve to inform the consumer of any appeal process. Lastly, this decision making process was not in accordance with the standard NOD procedures.

2. In another Calhoun County case, the CPC issued a NOD terminating the consumer's Sheltered Workshop Funding. The explanation was a lack of county funds. This NOD contained a Right of Appeal/Appeal Process, however, it merely required the consumer to notify the CPC within fourteen (14) days of intent to appeal. The NOD included no other appeal process information. **[Exhibit 1.6].**

3. A Sac County consumer on the MR Waiver received one NOD reducing both vocational service funding and residential services. The reason given was a lack of county funds. The decision was made without consultation with the consumer's interdisciplinary team with respect to reduction of waiver services. **[Exhibit 1.7].**

4. In yet another Sac County case, a consumer received one NOD reducing both vocational funding and Supported Community Living services. The reason given was a lack of county funds. Once again, the decision was made without consultation with the consumer's interdisciplinary team with respect to reduction of waiver services. **[Exhibit 1.8].**

In each case, the NOD received by the consumer contained a Right of Appeal/Appeal Process merely requiring the consumer to notify the CPC within fourteen (14) days of intent to appeal. The NOD included no other appeal process information. **[Exhibits 1.4, 1.6, 1.7, 1.8, 1.9, 1.10].**

5. A consumer in Fayette County had been receiving services under the MR Waiver. Specifically the consumer was using the Consumer Directed Attendant Care (CDAC) service for many of his daily needs. The consumer received a NOD from the Fayette County CPC stating his CDAC hours were being reduced. Listed on the back of the NOD was the Appeal Process for "any individual who believed the decision was in error" in order to seek a review of the decision. The consumer initiated a review before the CPC as directed in the appeal process. The consumer received a hearing date and time before the CPC and attended the meeting with legal counsel. At the hearing, the CPC notified the consumer that the appeal process dictated on the back of the NOD was not the correct appeal forum but rather the consumer should have appealed through case management and its appeal procedure. **[Exhibit 1.11].**

Section III

Recommendations

All consumers receiving services deserve due process under the law. Based on the foregoing law (Section I) and factual examples (Section II), certain areas of concern arise. Iowa P&A has outlined below its perception of the counties' failure to comport with Iowa law in the decision making and appeal processes for consumers with disabilities.

A. County Boards of Supervisors May Not Act as Final Administrative Decision Makers

When decisions are made with respect to services funded solely by county dollars, federal dollars, or both, Iowa law mandates that specific procedures must be followed. These procedures evoke the protection of consumers' due process rights under the United States Constitution and Iowa law.

Iowa P&A compiled data based on published county management plans as to each county's appeal process and constructed a representative grid. **[Exhibit 3].** If the grid is reviewed in conjunction with the representative examples noted in Section II, it is evident that in most Iowa counties the county board of supervisors is making final determinations at the county level when a consumer appeals a decision. This practice is in direct violation of the Iowa Administrative Code regulations and case law precedent.

In 2000, a judgment was rendered in Salcido ex rel. Gilliland v. Woodbury County, Iowa, 119 F. Supp.2d 900 (N.D. Iowa 2000). **[Exhibit 4].** In Salcido, it was held that the position of the County Board as partisans and judges concerning county funding of mental health services necessarily involved a "lack of due process of law in the consideration of Salcido's appeal in the denial of mental health services." Salcido, 119 F. Supp.2d at 930 (citing Ward v. Monroeville, 409 U.S. 57 (1972)). **[Exhibit 5].** Subsequent to the decision in Salcido, the Iowa Administrative Code was amended to reflect the necessary change and states:

> **Appeals.** The county shall develop a process for appealing the decisions of the county or its agent. This appeal process shall be based on objective criteria, specify time frames, provide for notification in accessible formats of the decisions to all parties, and provide some assistance to consumers in using the process. **Responsibility for the final administrative decision on an appeal shall not rest with the county board of supervisors.** If the appellant has state case status, responsibility for the final administrative decision on an appeal shall rest with the department, following the procedures established in 441—Chapter 7.

Iowa Admin. Code r. 441-25.13(2)(j) (2006) (emphasis added). **[Exhibit 12].**

All counties are bound by the amended regulation. Despite this change in the regulations and controlling case law precedent, most counties in Iowa are not adhering to the change in law and continue to use their respective boards of supervisors as final decision makers in the county appeal process. In 2006, six years after Salcido and subsequent regulation amendment, there is no justification for counties to utilize county boards in this capacity. Counties should cease issuing NODs which reference an inaccurate appeal process.

In accordance with the law, it is recommended that all counties act immediately to effect changes in their management plans to reflect an appeal process that states the county board of supervisors cannot be the final decision makers at the county level. **It is further recommended that the role of county board supervisors, characterized by its inherent pecuniary interest and fiduciary duty to the county, be entirely eliminated from the counties' appeal process.** Eliminating the role of supervisors seems logical and more in keeping with the underpinning of the law by promoting more objective, efficient and less costly decision making.

Noncompliance with the law with respect to any county's appeal process perpetuates potential due process violations and opens the door to litigation exposure. Therefore, it is in the best interest of the counties and the State to institute an **impartial** appeal board to make final determinations on each contested decision at the county level, as discussed below.

B. Impartial Appeal Board

Salcido held the county board of supervisors shall not be the final decision maker because of the inherent partiality of a county supervisor's role. Salcido, 119 F. Supp.2d at 930. The use of an impartial appeal board is, therefore, required. However, the need for an impartial body begs the question of what constitutes an impartial body. For example, one cluster of three counties is creating an appeal board made up of volunteers from the community. The expressed intention was to also include one supervisor from each of the three counties as non-voting members. **[Exhibit 6].** As demonstrated in the grid **[Exhibit 3]**, the practice of utilizing county supervisors as appeal decision makers is quite widespread. Whether voting or non-voting, the inclusion of supervisors in an appeal process raises serious concerns regarding conflict of interest and undue influence.

The Iowa Administrative Code and Salcido both address the conflict of interest issue. The Salcido decision held it is an inherent conflict of interest when county supervisors decide on an individual's service issues since those services fiscally impact the county. Specifically, the decision states the following:

> There is undoubtedly the same "possible temptation" here that the County Board's responsibilities for the County budget—and more specifically, responsibilities for the County's mental health budget, which forms a very substantial part of County's entire budget—"may also exist when the [Board's] executive responsibilities for [County] finances may make [them] partisan to maintain "a low level of expenditures for mental health services or not to burden the mental health budget with the costs of services in a particular case."

Salcido, 119 F. Supp.2d at 930 (citing Ward, 409 U.S. at 60). **[Exhibits 4 and 5].**

The Iowa Administrative Code delineates a conflict of interest policy under the policies and procedures plan which states:

> Conflict of interest policy. The manual shall describe a conflict of interest policy that shall, at a minimum, ensure that service authorization decisions are either made by individuals or organizations which **have no financial interest in the services or supports to be provided**, or that such interest is fully disclosed to consumers, counties, and other stakeholders. The process for this disclosure shall be described in the manual.

Iowa Admin. Code r. 441-25.13(1)(f) (2006) (emphasis added). **[Exhibit 7].**

In addition, Salcido holds that the final decision making body at the county level must be *impartial*. Salcido, 119 F. Supp.2d 900 at 930. Impartiality is destroyed when the appeal board includes a county supervisor, whether voting or not. County supervisors' roles are inherently partial because of their necessary pecuniary interest on behalf of the county. Id. The inclusion of partial members on an appeal board is a direct violation of the case law precedent as well as the Iowa Administrative Code. Iowa Admin. Code r. 441-25.13(1)(f) (2006). **[Exhibit 7].**

Iowa P&A recommends that all counties create and utilize an impartial appeal board comprised of individuals or organizations that have no financial interest in the services or supports provided to consumers. County supervisors should not be eligible to serve on this board. Pursuant to Iowa regulations and Salcido, the impartial board will be the final decision maker at the county level. Uniform, standardized regulations for the composition and operation, as well as criteria of eligibility for appeal board membership, should be required of all 99 counties.

C. Notice of Decisions (NODs) and Identified Deficiencies

A significant area of concern that has come to light through research into the appeal process and factual examples of NODs garnered over the last year is the construction and content of the NOD. Iowa Administrative Code defines the content of the NOD:

> Notice of Decision. The review process shall ensure a prompt screening for eligibility and initial decision to approve or reject the application or to gather more information. A written notice of decision which explains the action taken on the application and the reasons for that action shall be sent to the applicant or authorized representative or, in the case of minors, the family or the applicant's authorized representative. The time frame for sending a written notice of decision shall be included. If the consumer is placed on a waiting list for funding, the notice of decision shall include an estimate of how long the consumer is expected to be on the waiting list and the process for the consumer or authorized representative to obtain information regarding the consumer's status on the waiting list. **The notice of decision shall outline the applicant's right to appeal and include a description of the appeal process.**

Iowa Admin. Code r. 441-25.13(2)(c) (2006) (emphasis added). **[Exhibit 8].**

The NOD should be tailored to the individual consumer, provided to consumers and/or their advocates, and contain a complete explanation of what happened, why it happened, and what is to happen next. It is an essential document for consumers who have the right to understand changes made to their services and how they can legally challenge those decisions. Consumers have the right to appeal the adverse decision as well as the right to be provided with a meaningful, accurate description of how to appeal.

Content from the NODs issued to consumers after the Board of Supervisors from Sac and Calhoun Counties rendered their decisions included the following language:

> You have exercised your final stage of appeal at the county level. The Board of Supervisors makes the final administrative decision at the county level, except for "state cases" and Department of Human Services Program matters. If you disagree with the Board of Supervisors' decision regarding service, supports or funding, you can appeal to the Iowa District Court in and for Sac County. Appeals from the Board of Supervisors' decision shall be allowed within the time and by the manners and procedures established under the Iowa Administrative Procedures Act, Chapter 17A, Code of Iowa [sic]

[Exhibits1.1 and 1.2].

In addition to inaccurately identifying the board of supervisors as the final decision makers at the county level, the language in the NOD quoted above guides the consumer to appeal the board's decision to the district court, utilizing as authority the

Iowa Administrative Procedures Act, Chapter 17A. (See Section I, pg.3). Merely referencing this chapter of code to describe the appeal process to a consumer poses three problems.

The first problem is that consumers are seldom attorneys and cannot be expected to understand either what is being referenced, or what the citation to Chapter 17A means as applied to their situation. Clearly, for a typical consumer, citing to Iowa Code does not qualify as a meaningful appeal process description.

Secondly, Chapter 17A provides an appeal process for decisions made by an *administrative agency*. Iowa Code § 17A.2(1) (2005). **[Exhibit 10].** Neither a county board of supervisors, nor an impartial county appeal board, qualifies as an administrative agency under Iowa Code. Chapter 17A is therefore inapplicable. Rather, the appropriate legal mechanism for filing in district court appears to be a petition for writ of certiorari. Iowa R. Civ. P. 1.1401. **[Exhibit 11].**

Thirdly, language in consumers' NODs that merely refers to a chapter of Iowa Code, even if it were the correct authority, is woefully inadequate to meet the legal standard set forth in the Code. Counties should develop and implement a process for appealing the service decisions of the county "based on objective criteria; specifying time frames, provide for notification in accessible formats . . . and provide assistance to consumers using the process." Iowa Admin. Code r. 441-25.13(2)(j) (2006). **[Exhibit 12].**

The Fayette County factual scenario from Section II is another example of inaccurate information being provided to consumers. **[Exhibit 1.11].** It is the county and CPC's responsibility to provide the correct appeal procedure. This consumer was a recipient of MR Waiver services and should have followed that specific waiver appeal process. **[Figure 2].** Instead, the appeal process on the NOD inaccurately stated the consumer was to appeal to the CPC, then to the Board of Supervisors, and then to an administrative law judge (ALJ). The consumer requested a hearing in accordance with the procedure outlined on the NOD and a hearing time was set before the CPC. At the hearing, the CPC then informed the consumer the procedure outlined on the NOD was wrong and he actually should have appealed through the waiver procedures. This example illustrates once again that a county failed to provide an accurate, clear and usable description of the appeal process, resulting in another violation of a consumer's due process rights. Additionally, utilizing the Board of Supervisors as the final decision makers at the county level prior to the reconsideration process is not in compliance with the law.

It must also be noted that the terms "mandated" and "non-mandated" are not useful in providing a rationale for the reduction and/or termination of services to consumers. These terms do not meaningfully explain the service management system or its processes. First, it is not necessarily true to say that 100% county funded services are "non-mandated." For example, MR services, which counties are now calling "non-mandated," are actually mandated services under Iowa Code § 222.60 (2005). This Code section provides that upon diagnosis for eligibility, MR services shall be paid by

the county of legal settlement, as set forth in the counties' management plans. **[Exhibit 13].**

Second, the Code section governing county management of disability services provides that the county shall have a plan for the administration of these services at the consumer level. Iowa Admin. Code r. 441-25.13(2) (2006). A county is not free to do as it likes with respect to disability services. For example, each county must create a plan to offer a full array of services, to administer the plan at the consumer level and to include an explicit appeal process. Therefore, in the interests of equity, fairness, and comportment with Iowa law, delineated in each county's management plan, counties should provide a specific process to be followed, in all cases where services are being scrutinized for reduction and/or termination.

Time frames, deadlines and any other requirements should be clearly stated in order to make the appeal process truly accessible for consumers. For example, the consumer receives no notification that failure to petition the court for a writ of certiorari within 30 days will result in the loss of the right to contest the decision in district court and bar any claim. **[Exhibit 11].** Furthermore, nowhere in any of the CPC or appeal NODs was any mention made of the need to exhaust the reconsideration process before a consumer may take an appeal before the Department Director, in the appeal of a MR waiver service decision. **[Exhibit 1.11].** The Administrative Code provides that a hearing will NOT be granted when an appeal is filed prematurely as the appellant has not exhausted the reconsideration process. Iowa Admin. Code r. 441-7.1, 7.5(2)(d)(2) (2006). **[Exhibits 14 and 15].**

As can be seen from review of the examples provided in Section II and by scrutinizing the compiled grid **[Exhibit 3]**, the vast majority of our 99 counties' appeal process as contained in the NODs do not comport with Iowa law. The NODs either lack any meaningful description of the appeal process, lack description that is clearly written, or fail entirely to provide any appeal process. The result is a failure to provide consumer accessibility. This demonstrated lack is a violation of consumers' due process rights and could be actionable against the county. **[Exhibit 12].**

The law states that the NOD shall describe the appeal process. [Iowa Admin. Code r. 441-25.13(2)(c) (2006). **[Exhibit 8].** It is strongly recommended that, at minimum, the NOD incorporate a complete description of the appeals process in writing including, but not limited to:

- Deadlines for filing and receiving written appeals;
- Timelines for receiving decisions on appeals;
- The persons or entities that will hear and decide the appeal;
- When and how the person(s) or entities will meet to review the appeal;
- Consumer's right to retain an attorney or to seek advocate representation (this may include referrals to agencies that provide pro bono advocacy services);
- Clear and full description of correct law or legal procedure up to and including filing access to district court.

In surveying the county management plan information provided on the DHS website, Iowa P&A identified four (4) counties that are lacking any description or outline of an appeal process within their county management plans. **[Exhibit 3].** Upon review, these counties (Appanoose, Cedar, Clayton and Monroe) stated that the appeal process is included with the NOD. In these counties, there is no written, public statement of the appeal process. Therefore, only county residents who are disabled and receive a NOD from the county CPC are provided with a description of the appeal process.

The Iowa Administrative Code outlines that counties are required to have a written management plan which includes a provision regarding the appeals process. The plan is to be "accessible." All consumers and the public are entitled to an accessible written plan that comports with Iowa law. Most of the counties surveyed in our research are out of compliance on the issue of accessibility and some counties do not even have a written procedure outlining the steps for appeal. Any county failing to offer a written and accessible plan encompassing the appeals process, results in non-compliance and plan **inaccessibility** to consumers. **[Exhibit 3].** The Department is charged with this oversight. Iowa Code § 331.439(1)(b)(1)-(3) (2005). **[Exhibit 9].** Each county should take immediate and appropriate action to make their written plans, including the appeal process, meaningfully accessible.

D. Separate NODs for Each Service Determination and Its Appeal Process for All Services Reduced or Terminated, Regardless of the Funding Source

- **Determinations**

The NODs for some consumers reduced services that were both 100% county funded and HCBS waiver services (combined Federal and county dollars). **[Exhibits 1.4, 1.6, 1.7, 1.8, 1.9, 1.10].** The CPC later agreed that she lacked the power to unilaterally reduce or terminate waiver services in such a manner and thereafter rescinded the adverse decisions relating to waiver services. When reducing or terminating a service paid by combined funding, the process prescribed by law must be followed. **[Exhibit 16].** Before a county can reduce or terminate 100% county funded services, the county is directed by law to formulate a plan for such actions as set forth in Iowa law stating "[t]he plan administration section of the policies and procedures manual shall specifically outline procedures for administering the plan at the consumer level." Iowa Admin. Code r. 441-25.13(2) (2006).

It is recommended that the CPCs **issue separate NODs for each service affected, stating in clear language how and why the reduction/termination decisions were made, especially if the adverse decision involves services from different funding streams.** Prior to issuing a NOD, reductions in services require that the appropriate decision making process be followed in compliance with Iowa law and regulations. It is further recommended that the county have a clearly delineated plan for its decision making process relating to reductions and terminations in county funded services. Lastly, it is **recommended that standardized regulations as to the processes**

required to reduce and/or terminate services, despite the funding source, be clearly delineated and required of all 99 counties.

- **Appeals**

With respect to appeal processes, the counties are charged with the duty to formulate an appeal process as part of their county management plans. In addition, each waiver has a separate appeal process statutorily mandated. **[Exhibit 17].** When an adverse NOD on a fully county funded service or a combined funded MR or BI service is at issue, the consumer must follow the appeal process that the county has formulated before appealing to the Department. **[Figures 1 and 2].** That process should be identical to that of fully county funded service decisions which must be clear, easily accessible to the consumer and descriptive of the steps involved in the process of appeal. By law, the county appeal process must end with an ***impartial appeal board.*** Salcido, 119 F. Supp.2d at 930. **[Exhibit 4].**

At the end of the county appeal process, the appeal path for a consumer diverges, depending upon whether a fully county funded service is involved, or whether a service provided via combined funding is at issue. If a consumer, whose service is 100% county funded, chooses to appeal the final decision at the county level, the consumer is then required to petition the district court for a writ of certiorari. Iowa R. Civ. P. 1.1401. **[Exhibit 11].**

If the service decision that is appealed is paid for with combined funding (i.e., HCBS waiver services), the next step is to file an appeal with the Department, but only after exhausting the remedy of the "reconsideration" process. **[Figure 2].** However, as stated previously, an exception would be for MR and BI Waivers, where the consumer would first appeal to an impartial appeal board. **[Figure 2].** ""Reconsideration" means a review process that must be exhausted before an appeal hearing is granted." Iowa Admin. Code r. 441-7.1 (2006). **[Exhibit 14].** An adverse Department decision may then be appealed via Chapter 17A to district court for judicial review of an administrative agency decision.

The consumers who were issued the NODs in the factual examples in Section II were not afforded their constitutional due process rights. If the consumer decided to appeal the decision, the NODs failed to provide the appropriate legal remedy. Implementing standardized regulations requiring all 99 counties to issue separate NODs when services affected are funded from different sources would serve to improve the service management system. Additionally, a standardized regulation mandating that all 99 counties utilize uniform language when describing the pertinent appeal process would further serve to protect consumers' due process rights. Appeal Board members in all 99 counties operating under standard language and procedures with respect to the appeal process would facilitate process credibility, and would further assure that all consumers will receive equal treatment.

Conclusion

Iowans with disabilities deserve to have their service determinations and the appeals process for adverse decisions comport with Iowa law. Consumers cannot be expected to navigate a system involving this degree of difficulty. The difficulty is compounded when the process to be followed is hidden from consumers, either because the county has failed to include an appeal process in the county plan, the county appeal process is vague and/or inaccurate, or the appeal process is not made consumer accessible.

It is discriminatory and a violation of a consumer's due process rights to continue to have a majority of Iowa's counties out of compliance with current case law and the Iowa Administrative Code regulations as to the content of the Notice of Decisions, county management plans and the current implementation of the appeal process. County compliance with current law requires immediate attention and corrective action. Any reliance upon the Iowa Program for Assistive Technology (IPAT) materials as a guide for handling service decisions and consumers' appeals must cease immediately, until and unless the IPAT information is revised to comply with current law.

County officials must implement and adhere to the proper appeal process. The recommended amendments to Department regulations should be made and enforced in order to facilitate the fair, equitable and legal administration of the county management system of services for consumers with disabilities. As the mandated oversight authority, the Department must enforce compliance including administration and implementation of amendments to the county management plans' appeal process.

Iowa should aspire to raise the bar in its delivery of services to Iowans with disabilities. Regulations and statutes should be amended and enforced to produce more uniform and standardized practices in counties' service determinations and appeal processes. Standardization and uniformity among the 99 counties of Iowa should serve to create a more manageable system for both consumers and county officials, and a more equitable system for Iowans with disabilities. An administrative approach that comports with current law will result in a more transparent and credible system, and one less apt to violate consumers' due process rights, engendering potentially costly litigation.

Exhibit 1

SAC COUNTY
NOTICE OF DECISION

DATE OF DECISION: August 8th, 2006

FROM: Dawn Villhauer-Murley
Sac County Support Services
1710 West Main Street
Sac City, Iowa 50583

REQUEST:

	Eligibility Determination
	Funding/services request
X	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
X	Other: **SERVICE/ FUNDING DECREASE DECISION UPHELD BY SAC COUNTY BOARD OF SUPERVISORS**		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

- **The Sac County Board of Supervisors heard your appeal in closed session on Tuesday August 1, 2006. It was the decision of the Sac County Board of Supervisors to support the original funding decrease as requested and proposed by the Sac County CPC. The decision to decrease CDAC funded Services from 19 hours to 10 hours, SCL services from 13 hours to 5 hours, and Sheltered Workshop from 5 full days to 3 full days. This decision will be effective August 14, 2006. These decisions are due to an inadequate amount of revenue within the Sac County Mental Health Budget. These decreases in funding are necessary to work towards obtaining a positive fund balance in fiscal year 2007. You are eligible to seek services funded through regular Medicaid to replace the CDAC and SCL service funding decrease, and you should do so before accessing future services through the HCBS/MR waiver funded Medicaid. This would qualify as a same or similar service that is free of charge to you. Sheltered Work Shop is not a mandated service, therefore no replacement is offered or suggested. Your case manager, , along with the rest of your interdisciplinary team is available to assist**

2005-2006 Service Costs		Total Cost	Sac County Cost	
45 units SCL/ reduced 13-CDAC, 19-SCL				
5 days sheltered work				
446 Units of SCL	*-*	**$10,947.86**	**$3,983.93**	*36.39%*
actual useage from ISIS payment system				
229 Units of Sheltered Work		**$8,631.01**	**$8,631.01**	*100%*
actual useage from county payment system				
		$19,578.87	**$12,614.94**	

2006-2007 Proposed Funding Cuts		Total Cost	Sac County Cost	
5 units SCL/ 10 units CDAC				
3 days Sheltered Workshop				
60 Units of SCL	***	**$1,651.20**	**$628.61**	*38.07%*
120 Units of CDAC		**$2,218.80**	**$844.70**	*38.07%*
156 Units of Sheltered Work		**$5,879.64**	**$5,879.64**	*100%*
		$9,749.64	**$7,352.95**	

DIFFERENCE	$9,829.23	$5,261.99
This respresents less than 3% (2.63%) of the target goal for funding decreases		

- does not match rate of $24.52

*** rate increase effective 7/1/2006 $27.52

workshop cost is $37.69 daily

CDAC $18.49 hourly

SCL $24.52/ $27.52

you to explore other service/funding alternatives, if appropriate. This funding/service decrease is effective ongoing. New funding requests will be considered on a needs basis only, and non-mandated services will be placed on a waiting list.

Right of Appeal/ Appeal Process: You have exercised your final stage of appeal at the county level. The Board of Supervisors makes the final administrative decision at the county level, except for "state cases" and Department of Human Services Program matters. If you disagree with the Board of Supervisors' decision regarding service, supports or funding, you can appeal to the Iowa District Court in and for Sac County. Appeals from the Board of Supervisors' decision shall be allowed within the time and by the manners and procedures established under the Iowa Administrative Procedures Act, Chapter 17A, Code of Iowa

SAC COUNTY
NOTICE OF DECISION

DATE OF DECISION: August 8th, 2006

FROM: Dawn Villhauer-Murley
Sac County Support Services
1710 West Main Street
Sac City, Iowa 50583

REQUEST:

	Eligibility Determination
X	Funding/services request
	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
X	Other: **SERVICE/ FUNDING DECREASE DECISION UPHELD BY SAC COUNTY BOARD OF SUPERVISORS**		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

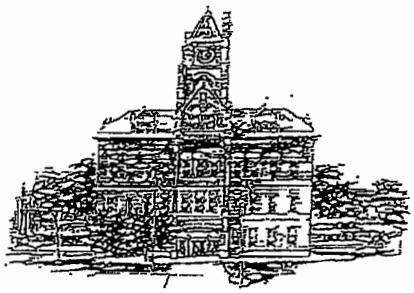
The Sac County Board of Supervisors heard your appeal in closed session on Tuesday August 1, 2006. It was the decision of the Sac County Board of Supervisors to support the original funding decrease as requested and proposed by the Sac County CPC. The decision to decrease your Pre-Vocational Services from 4 days to 2 days a week will be effective August 14, 2006. This decision is due to an inadequate amount of revenue within the Sac County Mental Health Budget. This decrease is necessary to work towards obtaining a positive fund balance in fiscal year 2007. As discussed during the hearing, the county is looking at needs based services only and is hoping to have a majority of individuals affected share in the burden of the funding cuts. The county is trying to avoid the 2nd option of completely discontinuing Sheltered Workshop Services funded for individuals with Sac County legal settlement. While this would still allow for Pre-Vocational Services, funded in part by the county and Medicaid, it would most likely severely limit the ability to receive the service within the County. This could cause and others receiving Pre-vocational services to be required to go to neighboring county workshops to receive the service. Not only would this be a disservice to our local county provider, but transportation outside of the county may pose as a problem, thus

Right of Appeal/ Appeal Process: You have exercised your final stage of appeal at the county level. The Board of Supervisors makes the final administrative decision at the county level, except for "state cases" and Department of Human Services Program matters. If you disagree with the Board of Supervisors' decision regarding service, supports or funding, you can appeal to the Iowa District Court in and for Sac County. Appeals from the Board of Supervisors' decision shall be allowed within the time and by the manners and procedures established under the Iowa Administrative Procedures Act, Chapter 17A, Code of Iowa

MARION COUNTY BOARD OF SUPERVISORS

MARION COUNTY COURTHOUSE
KNOXVILLE, IOWA 50138

TELEPHONE: 828-2231



March 29, 2005

, Staff Attorney
Iowa Protection and Advocacy Services
950 Office Park Road Suite 221
West Des Moines, Iowa 50265

Dear ;

This letter is in response to the Appeal Hearing with the Marion County Supervisors, held on March 25, 2005.
At the regular Board of Supervisors meeting held on March 28, 2005, the Board voted to deny the appeal submitted by consumer, .
The Board believes that has the potential to make improvements in his mental health with proper placement and treatment.
Based upon the documented incidents and ; performance at both sheltered work and assisted living, it appears to us that in the past year, there has been little or no improvement.
We support the CPC decision to fund a higher level of treatment services.

NOTICE OF RIGHT TO APPEAL

You are hereby notified that you have a right to appeal the Board's decision to the Iowa District Court.

Such an appeal must be made by filing a petition for judicial review in either the Polk County District Court, or in the District Court for the county in which the Applicant resides, within thirty (30) days after the issuance of this decision.

Call if there are questions.

Sincerely,
Howard Pothoven
Howard Pothoven, Chairman
Marion County Board of Supervisors

Cc:
Marion County Attorney
Marion County CPC
DHS

Exhibit 1.3

CALHOUN COUNTY
NOTICE OF DECISION

DATE OF DECISION: July 25, 2006

FROM: Dawn Villhauer-Murley
515 Court Street
PO Box 71
Rockwell City, Iowa 50579

REQUEST:

	Eligibility Determination
X	Funding/services request
	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
X	Other: **SERVICE/ FUNDING DECREASE**		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

- **Calhoun County is decreasing your Vocational Funding at from 5 full days to 3 full days. This decision is effective September 1, 2006. This decision is due to an inadequate amount of revenue within the Calhoun County Mental Health Budget. This decrease in funding is necessary to work towards obtaining a positive fund balance. This decision was made without the input of your entire interdisciplinary team. Your case manager or county social worker is available to assist you to explore other service/funding alternatives, if appropriate. This funding/service decrease is effective ongoing. New service requests will be placed on a waiting list.**

Right of Appeal/ Appeal Process: You may appeal any decision identified above by sending a written request to: Calhoun County CPC Administrator, 515 Court Street, PO Box 71, Rockwell City, Iowa 50579. The appeal must be received within 14 days of the date of this notice. Our telephone number is 712-297-5292 ext. 237.

CC: TCM DHS offic

Exhibit 1.4

COUNTY SUPPORT SERVICES

Sac Office— 1710 West Main Street, Sac City, Iowa 50583 Phone (712) 662-7998 Fax (712) 662-7762
Ida Office— 401 Moorehead Street, Courthouse, Ida Grove, 51445 Phone (712) 364-2385 Fax (712) 364- 4471
Calhoun Office—515 Court Street, PO Box 71, Rockwell City, Iowa 50579 Phone (712) 297-5192 Fax (712) 297- 5309

Central Point of Coordination
Mental Health Administration
Case Management

August 16, 2006

Dear

I received a letter of appeal regarding the decrease to your vocational services effective September 1, 2006. However, since the letter was signed by your parents and not signed by you, I am not able to officially accept it as a letter of appeal. I am aware that since you have received that Notice of Decision, your interdisciplinary team has met with you and re-assessed your service needs. This was part of the process to complete your Annual Outcomes Achievement Plan. It is my understanding that your Targeted Case Manager was unable to justify your need for continued Pre-vocational services, funded through HCBS Medicaid and county dollars. Your Targeted Case Manager did request Sheltered Workshop Services. Sheltered Workshop Services are not mandated. Calhoun County did approve funding for Sheltered Workshop Services at the level of funding that they were providing you while receiving Pre-Vocational Services. Therefore, the county has not issued a funding cut and your original appeal is null and void. The new Calhoun County decision to fund 2 days of Sheltered Workshop Services is effective August 8, 2006.

Your Targeted Case Manager is available to assist you and your interdisciplinary team to explore other service/funding alternatives, if appropriate. Only new mandated service requests will be considered, all non-mandated service requests will be placed on a waiting list. Individuals will be taken off the waiting list on a needs based decision and as funding becomes available.

Sincerely,

Dawn Villhauer-Murley, LBSW CPC

Dawn Villhauer-Murley, LBSW
CPC/ Case Management Administrator
Sac/Ida/Calhoun County

CC: TCM-

Exhibit 1.5

CALHOUN COUNTY
NOTICE OF DECISION

DATE OF DECISION: July 25, 2006

FROM: Dawn Villhauer-Murley
515 Court Street
PO Box 71
Rockwell City, Iowa 50579

REQUEST:

	Eligibility Determination
X	Funding/services request
	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
X	Other: **SERVICE/ FUNDING DECREASE**		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

Calhoun County is no longer able to provide your Sheltered Workshop Funding at This decision is effective September 1, 2006. You currently have a job in the community. This decision is due to an inadequate amount of revenue within the Calhoun County Mental Health Budget. This decrease in funding is necessary to work towards obtaining a positive fund balance. This decision was made without the input of your entire interdisciplinary team. Your case manager or county social worker is available to assist you to explore other service/funding alternatives, if appropriate. This funding/service decrease is effective ongoing. New service requests will be placed on a waiting list.

Right of Appeal/ Appeal Process: You may appeal any decision identified above by sending a written request to: Calhoun County CPC Administrator, 515 Court Street, PO Box 71, Rockwell City, Iowa 50579. The appeal must be received within 14 days of the date of this notice. Our telephone number is 712-297-5292 ext. 237.

CC:

SAC COUNTY
NOTICE OF DECISION

DATE OF DECISION: June 28, 2006

FROM: Dawn Villhauer-Murley
Sac County Support Services
1710 West Main Street
Sac City, Iowa 50583

REQUEST:

	Eligibility Determination
	Funding/services request
	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
	Other: Explain		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

Sac County is decreasing your vocational service funding to three full days a week effective August 1, 2006. Sac County is decreasing your residential services from 25 hours to 20 hours effective August 1, 2006 These decisions are due to an inadequate amount of revenue in within the Sac County Mental Health Budget. These decreases in funding are necessary to work towards obtaining a positive fund balance in fiscal year 2007. This decision was made without the input of your entire interdisciplinary team. Your case manager or county social worker is available to assist you to explore other service/funding alternatives, if appropriate. This funding/service decrease is effective ongoing. New service requests will be placed on a waiting list.

Right of Appeal/ Appeal Process: You may appeal any decision identified above by sending a written request to: Sac County CPC Administrator, 1710 West Main Street, Sac City, Iowa 50583. The appeal must be received within 14 days of the date of this notice. Our telephone number is 712-662-7998.

cc: Sac/Ida County TCM

Exhibit 1.7

2005-2006 Service Costs 25 units SCL/ 5 days sheltered work		Total Cost	Sac County Cost	
256 Units of SCL *actual useage from ISIS payment system*	*-*	**$6,283.54**	**$2,286.59**	*36.69%*
256 Units of Sheltered Work *actual useage from county payment system*		**$9,648.64**	**$9,648.64**	*100%*
		$15,932.18	**$11,935.23**	

2006-2007 Proposed Funding Cuts 20 units SCL/ 3 days sheltered workshop		Total Cost	Sac County Cost	
240 Units of SCL	***	**$6,604.80**	**$2,514.45**	*38.07%*
156 Units of Sheltered Work		**$5,879.64**	**$5,879.64**	*100%*
		$12,484.44	**$8,394.09**	

DIFFERENCE	**$3,447.74**	**$3,541.14**
This is not a savings to the county.		

- does not match rate of $24.52

*** rate increase effective 7/1/2006 $27.52

workshop cost is $37.69 daily

SCL $24.52/ $27.52

SAC COUNTY
NOTICE OF DECISION

DATE OF DECISION: July 5, 2006

FROM: Dawn Villhauer-Murley
Sac County Support Services
1710 West Main Street
Sac City, Iowa 50583

REQUEST:

	Eligibility Determination
X	Funding/services request
	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
X	Other: **SERVICE/ FUNDING DECREASE**		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

– Sac County is decreasing your Vocational funding at to one day a week effective August 1, 2006. Sac County is decreasing your Supported Community Living Services to 12 hours a month effective August 1, 2006. This decision is due to an inadequate amount of revenue within the Sac County Mental Health Budget. This decrease in funding is necessary to work towards obtaining a positive fund balance in fiscal year 2007. This decision was made without the input of your entire interdisciplinary team. Your case manager or county social worker is available to assist you to explore other service/funding alternatives, if appropriate. This funding/service decrease is effective ongoing. New service requests will be placed on a waiting list.

Right of Appeal/ Appeal Process: You may appeal any decision identified above by sending a written request to: Sac County CPC Administrator, 1710 West Main Street, Sac City, Iowa 50583. The appeal must be received within 14 days of the date of this notice. Our telephone number is 712-662-7998.

cc: Sac/Ida County Case Management

Exhibit 1.8

SAC COUNTY
NOTICE OF DECISION

DATE OF DECISION: June 28, 2006

FROM: Dawn Villhauer-Murley
Sac County Support Services
1710 West Main Street
Sac City, Iowa 50583

REQUEST:

	Eligibility Determination
X	Funding/services request
	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
X	Other: **SERVICE/ FUNDING DECREASE**		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

Sac County is decreasing your CDAC funded Services from 19 hours to 10 hours effective August 1, 2006. Sac County is decreasing your SCL services from 13 hours to 5 hours effective August 1, 2006. Sac County is decreasing your Sheltered Workshop from 5 full days to 3 full days effective August 1, 2006. These decisions are due to an inadequate amount of revenue within the Sac County Mental Health Budget. These decreases in funding are necessary to work towards obtaining a positive fund balance in fiscal year 2007. This decision was made without the input of your entire interdisciplinary team. Your case manager or county social worker is available to assist you to explore other service/funding alternatives, if appropriate. This funding/service decrease is effective ongoing. New service requests will be placed on a waiting list.

Right of Appeal/ Appeal Process: You may appeal any decision identified above by sending a written request to: Sac County CPC Administrator, 1710 West Main Street, Sac City, Iowa 50583. The appeal must be received within 14 days of the date of this notice. Our telephone number is 712-662-7998.

cc: / Sac/Ida County TCM

Exhibit 1.9

SAC COUNTY
NOTICE OF DECISION

DATE OF DECISION: June 28, 2006

FROM: Dawn Villhauer-Murley
Sac County Support Services
1710 West Main Street
Sac City, Iowa 50583

REQUEST:

	Eligibility Determination
X	Funding/services request
	Review or appeal of previous decision

DECISION:

	Eligible		Not eligible
	Funding Approved		Funding Denied
	Partial Funding		Waiting List
	No Action Taken		Pending
X	Other: **SERVICE/ FUNDING DECREASE**		

EXPLANATION OF DECISION:
You requested that we determine your eligibility and/or fund the following services, supports and costs:

- Sac County is decreasing your Pre-Vocational Services from 4 days to 2 days effective August 1, 2006. This decision is due to an inadequate amount of revenue within the Sac County Mental Health Budget. This decrease in funding is necessary to work towards obtaining a positive fund balance in fiscal year 2007. This decision was made without the input of your entire interdisciplinary team. Your case manager or county social worker is available to assist you to explore other service/funding alternatives, if appropriate. This funding/service decrease is effective ongoing. New service requests will be placed on a waiting list.

Right of Appeal/ Appeal Process: You may appeal any decision identified above by sending a written request to: Sac County CPC Administrator, 1710 West Main Street, Sac City, Iowa 50583. The appeal must be received within 14 days of the date of this notice. Our telephone number is 712-662-7998.

cc: Sac/Ida County TCM

Exhibit 1.10

2005-2006 Service Costs 18 days @ month pre-voc/ 756 miles montly/ $7050.00 respite	Total Cost	Sac County Cost 36.39%
8232 Units of Transportation **	$5,319.80	$1,935.88
196 Units of Pre-Voc Services	$7,069.92	$2,572.74
205 Units of Respites Services	$2,509.20	$913.10
actual useage from ISIS payment system	$14,898.92	$5,421.72

2006-2007 Proposed Funding Cuts 9 days monthly pre-voc/ 378 miles monthly, cost nuetral Respite	Total Cost	Sac County Cost 38.07%
4536 Units of Transportation **	$2,948.40	$1,122.46
104 Units of Pre-Voc Services	$3,751.28	$1,428.11
205 Units of Respite Services	$2,509.20	$955.25
	$9,208.88	$3,505.82

DIFFERENCE	$5,690.04	$1,915.90
This represents about less than 1% (.95%) of the target goal for funding decreases		

** 42 miles daily, .65 cents each day

pre-voc- $36.07 daily

respite- $12.24 hourly

FAYETTE COUNTY COMMUNITY SERVICES
INDIVIDUAL SERVICE BUDGET

INDIVIDUAL NAME: _____ DATE: 5.27.05
ADDRESS: _____ DOB: _____

SOCIAL SECURITY #: _____ TITLE XIX #: _____

CHECK ONE: COUNTY SOCIAL WORK: _____ TCM: _____ HCBS WAIVER: X

SERVICES REQUESTED:

RESIDENTIAL: PROVIDER: _____ ADDRESS: _____

C*	W*			BEGIN DATE	END DATE	PER DIEM	UNITS /MO.	MONTHLY TOTAL	ANNUAL TOTAL
		COA#	SCL						
		COA#	RCF						
		COA#	RCF/MR						
	X	COA#	H CBS CDAC	6.1.05	6.30.06	12.32	X9 hrs	1097.37	13,168.44 *
		COA#							

DAY/WORK PROGRAM: PROVIDER: _____ ADDRESS: _____

			BEGIN DATE	END DATE	PER DIEM	UNITS /MO.	MONTHLY TOTAL	ANNUAL TOTAL
		COA#						
		COA# Work Act.						
		COA# Pre-Voc						
		COA# Sheltered Emp						
		COA# Support Emp						
		COA# ADC						
		COA# Day Hab						
		COA# Enclave						

TRANSPORTATION: PROVIDER: _____ ADDRESS: _____

		BEGIN DATE	END DATE	PER DIEM	UNITS /MO.	MONTHLY TOTAL	ANNUAL TOTAL
	COA#						

COMMENTS / EXPLANATION OF SERVICES REQUESTED: CDAC hours were decreased to keep servic appropriate according to CDAC agreement + based on info. provided by guardian

SUBMITTED BY:

TCM — Name/Title
5.27.05 — Date
_____ — Check ISIS entry

APPROVED / DENIED BY CPC: Carol Keene DATE: 5-31-05 ISIS: JM

Comments: _____

*C=County funded *W=MR/Waiver funded

Exhibit 1.11

APPEAL PROCESS

(1) Individuals who believe the decision was in error may seek a review of that decision. Only appeals initiated by you or your representative will be heard.

(2) In initiate a review, the individual must send a written request for review within ten (10) calendar days of the adverse decision to: CPC Administrator, Fayette County Courthouse, West Union, Iowa 52175.

(3) Within ten (10) calendar days of the receipt of the written request for review, the CPC Administrator shall deliver to the individual, personally or by certified mail, a written notice of the date and time set for the review.

(4) The review will be held within ten (10) working days of the receipt of the request for review.

(5) The individual shall have the right to appear in person at the review and present any evidence or documents in support of his/her position. If an individual fails to appear for the scheduled review, the reviewer may proceed and issue a decision.

(6) Any individual may waive the right to personally appear at the review and may present his/her case by documents only.

(7) Within ten (10) working days of the review, the CPC Administrator shall issue a written decision sent by certified mail, which shall include a statement of the reasons supporting the decision. The decision may contain a recommendation to the Board of Supervisors for compromise pursuant to 203.17, Code of Iowa.

(8) The written decision shall inform the individual of his/her right to further review by the Board of Supervisors.

(9) A request for further review by the Board of Supervisors shall be made by giving notice to the Board in writing and placed immediately upon the Board's agenda for the next regular Board Meeting.

(10) The Board of Supervisors will give notice of the review to the individual personally or by certified mail. The review will be held within ten (10) working days. Following the review, the Board of Supervisors will render its decision.

(11) If the individual or their representative disagrees with the Fayette County Board of Supervisors' decision regarding funding, they may appeal to the next step, The Administrative Law Judge.

(12) To initiate a review, the individual must send a written request for review within ten (10) working days following the Board of Supervisors' decision to the CPC Administrator.

(13) Within ten (10) working days the CPC Administrator shall contact an Administrative Law Judge for a review.

(14) The Administrative Law Judge will render its decision according to its administrative procedures. In such cases, the decision could be delayed up to 30 days.

(15) Any appeal hearings before the CPC, Board of Supervisors or Administrative Law Judge will be held in private.

Exhibit 2

County Management Plans for MH/DD Services
Policy and Procedures Manuals Best Practices Materials

---

1. County Management Plan: Policy and Procedures Manual Checklist
2. Introduction to the Policy and Procedures Manual
3. Policy and Procedures Manual
   Section J. How Can I Be Sure My Privacy Will Be Respected?
4. Policy and Procedures Manual
   Section K. What If I Have A Complaint, Or I Disagree With A Decision About Eligibility, Services or Funding?
5. Notice of Decision Form (front page)
6. Appeals Process Form (back page or reverse of Notice of Decision):
   This form involves decisions made by CPCAs which are appealed to the County Board of Supervisors.
7. Appeals Process Form (back page or reverse of Notice of Decision):
   This form involves decisions made by CPCAs which are appealed directly to an Appeals Committee.

Letter of Explanation

The University of Iowa Clinical Law Program, in conjunction with the Iowa Program For Assistive Technology (IPAT), has for more than a year and a half been reviewing how each of the 99 counties in Iowa delivers mental health and developmental disability (MH/DD) services. We have focused on the decision-making and appeals process, to identify the procedural models and plan provisions that best serve consumers, and to develop "best practice" materials which can be adopted or freely adapted by each county.

This letter is to let you know that we have completed our final materials, to provide you with copies of these documents, and to suggest future actions that you might consider taking in response to our efforts, findings and work product. We are writing to

you, to consumers and to other stakeholders who have been personally involved with our efforts, have expressed interest in reviewing and receiving the materials, and have worked to improve the services, supports and funding provided to persons with disabilities in your county.

Our goal is to improve the quality of information that consumers and others receive about how the system in each county works. Informed consumers, in our opinion, are better able to participate fully in developing and selecting services and supports that are tailored to their individual circumstances, priorities, abilities and capabilities. You, as a Central Point of Coordination Administrator (CPCA), play a pivotal role in shaping policy, drafting management plans, administering and overseeing related programs, and working at the county, state and federal levels to help restructure and refine Iowa's MH/DD services delivery system. We trust that the enclosed checklist, sample plan sections on confidentiality and appeal rights, Notice of Decision and Appeals Process forms, and other materials will help you achieve these goals and, at the same time, empower consumers.

By way of background, these documents were created only after we, and our predecessor Student Legal Interns, working under Len Sandler's supervision, conducted legal and factual research, interviewed stakeholders, and read and analyzed 86 county management plans. We compiled, compared and charted the different features of each county's decision-making and appeals process.

To better understand the real world concerns of administrators, we met with CPCAs from the South Central SCAT region. We then shared our preliminary findings at an Iowa State Association of Counties (ISAC) meeting, and provided a county-specific chart to each CPCA who requested one. Moreover, we visited a number of counties, including Winneshiek, Allamakee, Howard and Washington counties, to meet with program administrators. These visits provided us with the opportunity to candidly discuss, review and critique their respective plans. The CPCAs returned the favor by evaluating our draft materials and exchanging insights regarding confidentiality, notices of decision, appeals and other plan provisions.

To ensure that all stakeholders contributed to the project, we interviewed individual consumers and their family members, and gathered more information at the 1998 and 1999 Systems Change Network (SCN) Congress meetings. The SCN is a grass roots education and advocacy organization that promotes changes in disability-related laws and policies. The professional advocate's perspective was obtained by meeting with representatives of the Legal Services Corporation of Iowa, Iowa Protection & Advocacy Services, Inc., Centers for Independent Living, the Iowa Program For Assistive Technology, and by speaking with private attorneys.

Members of the Key Coalition, provider organizations, the State County Management Committee, the Governor's DD Council, the Department of Human Services, and local planning councils also contributed to the project. In August 1999, draft copies of our best practices materials were mailed to more than 20 reviewers. Their comments were invited and evaluated. Many of their recommendations were incorporated into the final set of materials which accompany this letter.

When reviewing the materials, keep in mind that we have not attempted to do the impossible -- to create a Policy and Procedures Manual that is to be used by every county. From the start, we have acknowledged and respected each county's right to devise a system which suits its population, tax base, resources and needs. No attempt has been made to impose any hard and fast rules or standards, either. Do not be put off by the sheer mass of the materials. We wrote them so that each county could pick and choose the documents, individual provisions, or forms that best serve the needs of all of its residents.

It is our distinct pleasure to provide you with the following materials:

1. **County Management Plan: Policy and Procedures Manual Checklist**, which is to be used to evaluate the completeness, effectiveness, and clarity of individual county management plans. The Table of Contents is organized in the Question and Answer format now used by Howard and Winneshiek counties.

2. **Introduction to the Policy and Procedures Manual,** which provides an overview of the MH/DD delivery system. It can be incorporated into the county plan or separately distributed as a consumer handbook.

3. **Policy and Procedures Manual "Section J. How Can I Be Sure My Privacy Will Be Respected?"** The section describes what happens to personal information and records provided by, for, and about consumers. It explains the general rules and the practical safeguards that apply to every stage of the application, service delivery and appeals processes. Also discussed are release of information forms, medical emergencies, and the state and federal laws that govern the disclosure of mental health, HIV/AIDS, substance abuse and other personal information.

4. **Policy and Procedures Manual "Section K. What If I Have A Complaint, Or I Disagree With A Decision About Eligibility, Services or Funding?"** This manual section details how MH/DD decisions are made and communicated, who the people are that make the decisions, and how decisions can be appealed. It is designed to walk people through each stage of the process. It is written for a county which uses three appeal stages. It is the most comprehensive and the most easily-edited segment because each appeal stage section repeats the general appeal rights, time lines and procedures set forth in previous sections.

5. **Notice of Decision Form (front page):** This form was drafted to fully inform consumers about every aspect of their request for services and the decision-making and appeals process. It includes instructions on how to appeal any decision and where to get help.

6. **Appeals Process Form (back page or reverse of Notice of Decision):** This form involves decisions made by CPCAs which are appealed to the County Board of Supervisors. It was created to help consumers and their representatives understand what they must do, and by when, if they disagree with or question any decision.

7. Appeals Process Form (back page or reverse of Notice of Decision): This form involves decisions made by CPCAs which are appealed directly to an Appeals Committee. Several counties have intermediate appeal stages.

We recommend that you read the materials in sequence, keeping in mind the different perspectives, goals, needs and abilities of consumers, advocates, providers, administrators, decision-makers, agencies and lawmakers. Many of the words and segments have been highlighted to draw attention to provisions that require you to insert specific information, choose among various options or otherwise tailor the materials to your exact specifications. The county attorney should be consulted to review the provisions which describe the county's obligations and the state and federal laws that apply to MH/DD issues.

Please share the materials with others in your community. Ideally, they will promote discussion and change. Plans are being made to post the documents on IPAT's website and to electronically circulate them by other means, too. The DHS is including this letter in its regular CPCA mailing, a courtesy which will save us considerable time and expense. Your comments and suggestions are welcomed and invited. For more information, contact Len Sandler by calling 319-335-9023, faxing documents to 319-353-5445, or e-mailing messages to Contact us if you would like us to review your county plan and to meet with you to discuss it. Your continued efforts to improve the MH/DD system are appreciated.

Sincerely,

Sarah Barnes
Craig Cannon
Amy Lyons
Chris Pashler
Student Legal Interns

Leonard A. Sandler
Clinical Professor

---

1. County Management Plan:

Policy and Procedures Manual Checklist

I. The Policy and Procedures Manual should be organized, designed, formatted and written for consumers, providers, administrators and others interested in Mental Health and Developmental Disability (MH/DD) matters. We recommend that the Manual include:

__ An Introduction to the County MH/DD System and its Management Plan which provides an overview of how the county funds and delivers services and supports, highlights issues of importance, and refers readers to other sections for more

information. It can be used and separately distributed as a consumer handbook (See attached model).

__ A Mission Statement.

__ The 24-hour crisis response hotline numbers, and the names of the persons and agencies to call in case of a medical or other emergency.

__ A Table Of Contents, with information organized and presented by topic, rather than by administrative code section, preferably in a Question and Answer format, one example of which reads:

A. Where Do I Go To Get Services And Funding?
B. How Do I Find Out If I Am Eligible For Services And Funding?
C. How Are Decisions Made About My Services And Funding?
D. What Types Of Services Are Available?
E. Will I Have To Pay For My Services?
F. What If I Am Approved To Receive Funding But There Is Not Enough Money?
G. What Should I Expect From My Services?
H. What Are My Rights And Responsibilities?
I. Can The Person Making Decisions About My Funding Benefit Personally?
J. How Can I Be Sure My Privacy Will Be Respected? (See attached model Section J)
K. What If I Have A Complaint, Or I Disagree With A Decision About My Eligibility, Services Or Funding? (See Attached Model Section K)

__ Language that is easy-to-read and understand.

__ Updated and accurate citations to governing laws, rules and regulations.

__ The information and plan particulars required by 441 IAC 25 (Attached).

__ A list of advocates -- attorneys and others -- available to assist the consumer in understanding or appealing any decision.

__ Sample Forms: Application, Notice of Decision/Appeal Process, Request To Appeal, Release of Information, Complaint, and other forms used by the county (See attached model Notice of Decision/Appeals Process forms).

__ Information about how to obtain accommodations and copies of the County Management Plan, the Policy and Procedures Manual, Applications, Notices of Decision, and other materials in alternate formats.

II. Notices of Decision should be tailored to the individual consumer, provided to consumers, advocates and service providers, and contain a complete explanation of what happened, why it happened, and what is to happen next. We recommend that the Notice of Decision include:

__ The date of the decision and the date by which any appeal must be received. Central Point of Coordination (CPC) staff should compute the deadline day/date.

__ The name, address, telephone, e-mail and fax numbers of the decision maker.

__ The names, addresses, and telephone numbers of the consumer, consumer representatives, providers, and others that will receive a copy of the Notice.

__ A complete explanation of the decision, including:

__ The subject matter of each request -- eligibility, funding, appeal, etc.

__ The complete list of services and supports requested and the cost of each.
__ The precise action taken on the request, including the services approved, partially funded, or denied; the cost of each service, the effective date of the service funding, the consumer's financial contribution, if any, and the services that will continue to be provided throughout the appeals process.
__ The records and information used to decide the request.
__ An explanation of what the consumer must do to appeal the decision, request information, obtain the decision in alternate formats or get help to understand or appeal the decision.
__ A complete description of the appeals process, including:
  __ Deadlines for filing and receiving written appeals
  __ The person(s) or entities that will hear and decide the appeal, and when and how they will meet to review the appeal.
  __ A complete explanation of appeal rights, including the consumer's right to hire a lawyer or have someone else represent them at their own expense; to present evidence and witnesses, personally appear at any hearing or review, inspect, in advance of any hearing, all records and information to be used by the person(s) deciding the claim, and to submit additional records or information.
  __ The measures taken to safeguard personal information about the consumer.
  __ The names, addresses and phone numbers of lawyers, organizations and advocates available to assist the consumer in appealing the decision.

III. Confidentiality and privacy practices and safeguards should detail what happens to information provided by, for, or about consumers. We recommend that this information be included in the Introduction, in a provision devoted exclusively to this topic, and in the appeal process provisions and forms. These provisions should delineate:

__ The broad range of medical, financial, employment and other information needed to evaluate and assess the consumer's eligibility and suitability for services and supports and funding.
__ The general policies that apply to routine matters and those that apply to medical, psychological and other emergencies and crises.
__ The persons and organizations that can consent to the release of personal information on the consumer's behalf, and the definition of each person or entity that can do so (legal guardian, authorized representative, legal representative, family member, custodian).
__ The persons and organizations that are entitled to receive or exchange information about the consumer and the extent to which they can share what they learn with others. This should cover the initial intake application through the last stages of any appeals process, up to and including the Board of Supervisors.
__ The day-to-day policies and office practices used by CPC staff, providers and others, in and out of their offices, including, but not limited to:
  __ The use of release of information and other forms.
  __ Guidelines for maintaining and protecting paper and computer records and using e-mail, cell phones and fax machines.
  __ The use of confidentiality stamps, coded information, identifiers, deletions and other measures to protect documents that identify the consumer and contain

personal information.
__ The protocols for interviewing consumers and conducting other business in private settings.
__ The federal, state, and local laws and regulations that apply to these matters.
__ The additional protections afforded HIV/AIDS, mental health and substance abuse information, and how they will be implemented.
__ Whether or not any personal information about the consumer will be made available to the public, by or through:
__ State Open Records Act requests (Iowa Code Chapter 22), or other freedom of information requests.
__ Board of Supervisors proceedings which are subject to the State Open Meetings Law (Iowa Code Chapter 21), through:
__ Agendas or Notices posted at the courthouse, printed in newspapers, or published elsewhere.
__ Persons or media representatives attending or broadcasting Board proceedings or deliberations, or learning of decisions announced at meetings.
__ Minutes of Board proceedings
__ Other Means
__ Training programs on confidentiality that are offered and actually provided to CPC staff, providers, experts and consultants, administrators, court and agency personnel, individuals involved in hearing and deciding claims and appeals, County Supervisors, and others involved in the delivery of services.
__ Release of Information Forms should:
  __ Identify all persons and organizations that are free to share records and information.
  __ List the nature and substance of the information to be shared and the purposes for which the information can be used.
  __ Identify who consented to the release of information and by what authority they did so.
  __ Specifically list and authorize (or not) the release of HIV/AIDS, substance abuse or mental health information, and have the consumer or representative sign or initial those additional disclosures.
  __ Notify consumers that they may request a list of the persons and agencies that received the releases and shared information with anyone.
  __ Note that consumers can revoke or withdraw their consent at any time.
  __ Note for how long the consent is valid -- the time period when the consent is automatically revoked.
  __ Note for how long the consent is valid -- the time period when the consent is automatically revoked.
  __ Be signed by the consumer (or at the consumer's direction) or by someone authorized to act on the consumer's behalf.

IV. The Policy and Procedures Manual can be supplemented by materials created for consumers and advocates which explain the intake, enrollment and funding process, and advise them of their rights and responsibilities. These materials might complement, or be a substitute for, the Introduction/Overview.

__ Booklets and brochures created by or for your county.

__ Checklists and other forms which focus on a single subject or issue. For example, a checklist of time lines and events in the appeals process from the CPCA through the Board of Supervisors.
__ Newsletters, handbooks, checklists, manuals, and other materials created and distributed by other Central Point of Coordination Administrators (CPCAs), the Legal Services Corporation of Iowa, Iowa Program For Assistive Technology, University of Iowa Clinical Law Program, Iowa Protection & Advocacy Services, Inc., the Iowa State Association of Counties, the Department of Human Services, or others organizations.

V. The Policy and Procedures Manual should be reviewed and amended after asking and answering the following questions:

__ What is the plan's purpose - Is it to educate consumers and others, to comply with governing laws and regulations and/or to provide a road map for persons using the system?
__ Who is the target audience - Consumers, providers, state or federal agencies, lawmakers or others?
__ What happens to information provided by, for, or about the consumer, and what safeguards are used to protect and preserve confidential information?
__ Who is told about and receives copies of Applications, Notices of Decision and other materials?
__ How or in what manner are decisions communicated to consumers or others?
__ How can consumers appeal any decision regarding eligibility, funding or services?
__ What happens at each stage of the decision-making and appeals process -- who makes decisions, what time lines are involved and what procedures are used?
__ How is the plan organized, formatted, designed and written to address the target audience and achieve the intended purposes?

These materials were developed and distributed by Student Legal Interns working under the supervision of Clinical Professor Len Sandler at the Clinical Law Programs, University of Iowa College of Law, Iowa City, Iowa, 52242-1113.

The Student Legal Interns who contributed to the project are: Dai Parker-Gwilliam, Andrea O'Malley, Lori Semke, Carl Wosmek, Cindy Kim, Ron Martin, Douglas Foster, Yasir Aleemuddin, Sara Scott, Marci Lowman, Paula Marshall, Jessica Roberts, Sung Hee Cho, Henry Kass, Brian Kinstler, Rumi Kuli, Sarah Barnes, Craig Cannon, Amy Lyons and Christopher Pashler.

This Clinical Law Systems Reform Project was sponsored by the Iowa Program for Assistive Technology.

For more information, or to request copies of the materials in alternate formats, contact the Clinical Law Programs -- Call 319-335-9023, fax documents to 319-353-5445, or send e-mail Professor Sandler.

2. Introduction to the Policy and Procedures Manual

COUNTY
CENTRAL POINT OF COORDINATION OFFICE
ADDRESS
CITY, STATE ZIP
TELEPHONE
EMERGENCY SERVICE NUMBER
TELEFACSIMILE NUMBER
E-MAIL ADDRESS

MENTAL HEALTH & DEVELOPMENTAL DISABILITY SERVICES
COUNTY MANAGEMENT PLAN
POLICY AND PROCEDURES MANUAL
CONSUMER HANDBOOK

INTRODUCTION

The purpose of this Introduction is to explain how we provide, fund and deliver mental health and developmental disability services in _____County. It is written as a guide for consumers, their families, friends and advocates. It is also a guide for service providers, administrators, and others interested in these important matters.

This introduction has been written to answer many of the basic questions and concerns you may have about how these programs work in _____County. The planning and funding of services is an ongoing process that has to adapt to the changing needs of consumers. Whether you are applying for the first time, or asking us to renew services and funding, we want to continue to work closely with you. Our goal is to ensure that services are cost effective and meet your particular strengths, abilities, priorities and needs. Regrettably, our resources and funding are limited. Because of this, we can not honor or fund every request for services or supports.

We encourage you to contact us if you need more information, help or referrals. This Introduction, the County Plan, the Policy and Procedures Manual, and other materials are also available to the public in alternate formats through our office.

IN EMERGENCIES: CALL OUR 24-HOUR HOTLINE _____,
OR THE CRISIS MANAGEMENT PROVIDERS LISTED ON PAGE ____ OF THE PLAN.

HOW OUR SYSTEM WORKS

Consumer empowerment is our goal. It is essential that individuals have freedom of choice, and take an active role in deciding what services and supports they need and how those services are to be delivered.

Our office is called the Central Point of Coordination (CPC). We act as the gatekeeper to a countywide system of services and supports by taking applications, making eligibility decisions, evaluating the needs of individuals, and working to create and

implement a service funding plan. We are part of the county's Central Point of Coordination process, and we report to the Board of Supervisors.

We also cooperate and enter into contracts with other agencies, organizations and service providers. Providers are public and private companies, professionals and facilities that deliver a wide range of services. They might be businesses that operate transportation or para-transit systems; hospitals with rehabilitation, mental health, or long-term care facilities; practitioners such as counselors and therapists, home health care agencies, independent living centers, or job assistance coaches. Most providers in this county can assist you in filling out applications and forwarding them to our office. You can find a list of providers elsewhere or on Page __ in the policy and procedures manual.

The First Step: Intake, Eligibility and Enrollment:

You can receive services if you meet our four (4) eligibility requirements. The first requirement is that you have a diagnosed disability covered by the plan. We currently only cover persons with a diagnosis of:

- **Mental Illness**
- **Chronic Mental Illness**
- **Mental Retardation**
- **Developmental Disability**
- **Brain Injury**

The second requirement is that you meet our income and resource financial eligibility guidelines. The third requirement is that the requested service or support is covered by the plan. The fourth requirement is that _____County is required to pay for those services.

To start the process, a written application must be completed. You can do this at our offices, or at any one of the providers or access points listed in our plan. We can also mail an application directly to you. Staff members can help you fill out the applications. If you like, you can bring along a friend, family member or other person familiar with your personal matters.

You will be asked to provide information about disability, health, education, work history, income, benefits, insurance, and other matters. The application also requires us to gather information about others who live in your household or who are responsible for your support. We will also want to know where you have lived in the past, so we can determine if _____County has the responsibility to pay for the services and supports for which you qualify. A copy of our Application can be found elsewhere or in the Appendix in the policy and procedures manual.

We want to assure you that your privacy will be respected and protected both in and out of our offices. No personal information will be shared with others unless you give us written permission or we are required by law to do so. You will be asked to sign release forms that authorize us to talk with other persons and organizations and to freely exchange information and records about you.

In medical and psychological emergencies, however, you may be unable to give your consent to the release of information. When this happens, our first priority is to see that you receive emergency services. We will only release information that is necessary and required by law to address the crisis. We will keep track of the information. After the emergency ends, we will tell you who received the information and why they were entitled to receive the information. More information about our confidentiality and privacy policies and safeguards, and copies of our release forms, can be found in Section J of the Policy and Procedures Manual.

After we review the application information, we will decide whether or not you are eligible for county services and funding. If you meet our eligibility criteria, you are entitled to receive county funding. A written Notice of Decision will be sent to you which explains how and why we made that decision. If you are not eligible, you will receive a Notice of Decision which explains why we denied your request. You have the right to appeal any part of the decision. The appeals process is discussed later in this introduction and is more thoroughly explored in Section K of the Policy and Procedures Manual.

The Second Step: Service Planning and Funding:

Once we decide that you are eligible to receive services and supports, the next step is to develop a service plan individualized to your unique circumstances and priorities. To do that, we must learn more about you and assess your health care, treatment, employment, transportation, and other needs. A member of our staff will work with you and others to create a service plan tailored to your specific strengths, abilities and needs. If you agree, they may also speak with your family members, doctors, therapists, services providers, or other people involved in your day-to-day affairs.

When the plan is fully developed it will either be approved, adjusted, or denied. In any event, we will send you a written Notice of Decision which will set forth the services and supports you requested, the cost of each service, the actions we have taken on your request, and the reasons why we were able or unable to fund your service and funding requests. Many of the services are provided without cost to you. In some circumstances, depending on your income and resources, you will have to pay some of the costs. A list of funded services and supports can be found on Page ____ of the Policy and Procedures Manual.

It is possible that we will not have the funds to pay for all of the services that you need. If this happens, your name may be placed on a waiting list. While you are on the waiting list, we will refer you to other resources or agencies that might be able to help you or provide the services and funding that we cannot. You can appeal this or any other decision. An attorney can represent you during the appeals process, at your own expense.

The Third Step: Continued Service Coordination:

Even after you begin to receive services, we will keep working with you to make sure that your services and supports continue to meet your changing needs. Case reviews will also be conducted. We are always open to suggestions, and we welcome your

comments on how we can better serve you and others in our community. Feel free to contact us if you have any questions, complaints or compliments about us, about your providers, or about anyone else involved in our county's mental health and developmental disability service system.

---

3. Policy and Procedures Manual

J. How Can I Be Sure My Privacy Will Be Respected?

Overview and General Principles: The purpose of this section is to describe what happens to personal information and records provided by, for and about consumers who apply for mental health and developmental disability services in our county. It explains the general rules and the practical safeguards that apply to each and every stage of the application, service delivery and appeals process. Also discussed are release of information forms, medical emergencies, and the state and federal laws that govern the disclosure of mental health, HIV/AIDS, substance abuse and other personal information.

We are committed to providing cost-effective services that match your unique strengths, circumstances, priorities, abilities and capabilities. To do so, and with your written permission, our staff must obtain and exchange records, information and impressions. Our written application asks for details about disability, health care, finances, employment, living arrangements, benefits and other personal matters. Developing a comprehensive service plan usually involves many individuals and organizations. Bringing people together is the best way we know to help you choose and begin receiving supports, referrals, case management and other services.

Confidentiality Safeguards: We are equally committed to respecting your privacy and keeping confidential the information, records, and files we compile, or that you share with us. In day-to-day terms, confidentiality means:

- We will get your written consent, or your legal guardian's written consent, before we give information to others. We will tell you, and your legal guardian, who received the information or records. During medical or other emergencies when you are not able to give your consent, we will only release information required by law to address and resolve the crisis.

- We will only release information or records to others when they need to know the information to accomplish a specific task. For example, persons hearing appeals on a limited issue do not need to review, or enter into evidence, a person's entire clinical or medical history or file.

- We will let you, or a person designated by you, review and copy your records. No fees will be charged for reviewing or copying records.

- We will conduct interviews with consumers and with others in private settings where the public can not overhear any of the discussions.

- We will conduct case management reviews, make referrals, and discuss and transact other consumer-related business in similarly private settings. We will not discuss information about you in elevators, restaurants or other public places or gatherings, or at our homes.

- We store and maintain paper and computer files in a manner that prevents the public from seeing or having access to them. This means that records will be returned each day to a file cabinet that is locked. It also means that a person cannot get into a computer file without a password.

- We will remove information that identifies you, such as your name, address and social security number, from various documents. These documents include e-mail, Internet, and select insurance, billing, quality control and other reports and documents.

- We will make sure that fax machine transmissions are directed to the proper persons, and that personal and confidential information is not communicated by cellular phone, e-mail or other non-secure, unencrypted means, without your written consent.

- We will mark any paperwork that has your name on it or identifies you with a "Confidential" stamp. We will put written warnings, as required by federal and state law, on any paperwork concerning mental health, substance abuse, HIV/AIDS, and other protected information.

- Help train Central Point of Coordination (CPC) staff, providers, court clerks, supervisors, and others about our practices and the laws and safeguards relating to personal information.

Release of Information Authorization Forms: When you apply for services, you will be asked to read, review, date and sign a release of information form. You can always change your mind at any time and revoke your consent to release information. Also, you can decide that only certain people or agencies can receive this information. Services will not be automatically denied if you refuse to sign the release. However, without supporting information, it will be difficult, if not impossible for us to act on or approve any request. If you are not able to sign the form or grant your consent, your legal guardian or can do so on your behalf.

A copy of the Release of Information form used by us can be found on page or in Appendix ___. It is included in our Application, which can be found on Page ___, or in Appendix ___.

The release identifies the persons and organizations that are free to share information and records about you. It also describes the types of information that can be released, the purposes for which the information can be used, and whether or not mental health, substance abuse or HIV/AIDS information can be released. It also notes that you have

the right to withdraw or revoke your consent, request a list of the persons and agencies that received and used the releases, and inspect the materials that were disclosed. It must be signed and dated. You must sign and initial the form in two separate places to signify that you give us permission to release mental health, substance abuse or HIV/AIDS information or records.

Medical and Other Emergencies: In medical and other emergencies you may be unable to give your consent to the release of information. When this happens, our first priority is to see that you receive emergency services. We will only release information that is necessary and required by law to address and resolve the crisis. We will keep track of the information we shared or obtained. After the emergency ends, we will tell you who received the information and why they were entitled to receive the information.

The Right To Review Records: You or your authorized representative may review your mental health and developmental disability files and records. This can be done during office hours and for any reason. You have the right to review your files and records during the appeals process, which is discussed in Section K.

We ask that you call ###-###-#### to schedule an appointment to review the records. Please give us advance notice and time to gather the information. A representative of our office may be present while you review the files. There is no charge for reviewing or copying records. In very limited circumstances, family members and others can make a written request to review records classified by Iowa law as "mental health records." Special rules and protections apply to mental health, substance abuse and HIV/AIDS information, and are summarized below.

Overview of Confidentiality Laws and Where to Find More Information: A host of federal and state laws and regulations apply to the disclosure of personal information. They are far too numerous for us to mention or detail in this policy and procedures manual section. Some are detailed elsewhere in the manual. Each has its own set of definitions and terms. The Iowa Code contains the laws of Iowa, many of which touch upon these matters and set forth our duties and responsibilities.

All of these laws and regulations can be found in your public library and are available on the Internet. We are furnishing this list and summary of laws as a general guide and as a courtesy to you. It is not intended to provide you with legal counsel or advice and you should not consider this to be legal counsel or advice. Only a licensed and qualified attorney can provide you with legal counsel, advice or representation. The laws are discussed in the order they appear in the Iowa Code:

- The State Open Meetings Law, Iowa Code Chapter 21, dictates how the County Board of Supervisors must conduct its business, including hearing and deciding appeals about mental health and developmental disability services, supports and funding. The general rule is that all matters must be discussed in open session, with members of the general public, the press and other media allowed to be present. In some counties, television or video cameras record the proceedings. Consumers can request that the meeting be closed to the public because mental health and other confidential information will be discussed.

Our county supervisors meet in closed session -- unless you request that the public and media representatives be present -- when reviewing MH/DD cases. They do so because the cases involve medical, mental health and other records which are required or authorized by state or federal law to be kept confidential.

- The State Open Records Act, Iowa Code Chapter 22, is Iowa's freedom of information act. It permits members of the public, including the media, to request, examine, copy, publish and distribute information and records from state, county and other governmental bodies. Confidential records, as defined by the law, can not be released to the public. Hospital, medical and professional counselor records are considered to be confidential.

- The State Acquired Immune Deficiency Syndrome Act, Iowa Code Chapter 141A, governs most HIV/AIDS issues. The law severely restricts how, when and by whom HIV test results and related information can be disclosed or shared.

- "Persons With Mental Retardation", Iowa Code Chapter 222, is the law which governs many issues about state hospital-schools and other placements.

- "Mental Illness, Mental Retardation, Developmental Disabilities, Or Brain Injury," Iowa Code Chapter 225C, has a consumer bill of rights. It also outlines the goals and duties of both the state and the counties relating to funding and delivering MH/DD/BI services
- "Disclosure of Mental Health and Psychological Information," Iowa Code Chapter 228, defines and describes the rules governing these particularly sensitive categories of information. The law significantly limits how, when and by whom mental health information can be disclosed. Only individuals with certain professional qualifications and credentials can receive this information.
- The Department of Human Services regulations regarding county management plans and confidentiality are found in the Iowa Administrative Code, 441 IAC 25. Guidelines and standards for mental health and developmental disability services are also included in 441 IAC 22 and 24.
- Other agencies publish rules in the Iowa Administrative Code or the Code of Federal Regulations to implement the many state and federal laws that apply to personal information.

For more information or lawyer referrals, please contact us. The Legal Services Corporation of Iowa, the Iowa Volunteer Lawyers Project, Iowa Protection & Advocacy Services, Inc., the local Center For Independent Living and other advocacy organizations may also be able to provide you with general or legal advice. A complete list of the organizations can be found in Section K.

4. Policy and Procedures Manual

K. What If I Have A Complaint, or I Disagree With A Decision About Eligibility, Services, or Funding?

Overview of Decision-Making and Appeals: The purpose of this section is to describe in detail how MH/DD decisions are made and communicated, who the people are that make the decisions, and how decisions can be appealed. It is also provides information about the rights consumers enjoy and the help that is available to consumers during each and every stage of the appeals process.

We do our best to make sure that applications are completed and decisions are made as quickly as possible. Written notices of decision will be mailed and communicated in person to consumers and providers. Emergency services are to be provided immediately, with funding decisions to be made afterward. Appeals at the county level, which may involve as many as three different stages, should take no longer than one month from the time a written request for appeal is received by us. The process is designed to resolve disputes promptly and informally. Strict rules of evidence and procedures do not apply to the hearings and meetings used to decide appeals at the county level. Different people are involved, and slightly more formal procedures might be employed, as an appeal advances from one stage to another.

The first stage involves initial decisions, which are made by Central Point Of Coordination (CPC) staff. Any appeal or complaint regarding the CPC staff decision will be heard and decided by the Central Point of Coordination Administrator (CPCA), who supervises the delivery of services in our county.

The second stage involves decisions made by the Central Point Of Coordination Administrator (CPCA) regarding eligibility, funding or services. Any appeal or complaint regarding the CPCA decision will be heard and decided by the Appeals Committee, which is comprised of county residents interested in mental health and developmental disability issues.

The third stage involves decisions made by the Appeals Committee. Any appeal or complaint regarding the Appeals Committee decision will be heard and decided by the County Board of Supervisors. The next stage involves appealing the decision of the Board of Supervisors to the District Court of Iowa or other courts, depending on the actions taken or the relief that is requested.

Appeals rights and protocols are explained in greater detail later in this section. Be assured that your personal information will be protected during each and every stage of the process. Staff members, committee members and supervisors receive training on the legal and practical safeguards that apply to personal, mental health and other information and records.

The State of Iowa, rather than our county, must sometimes pay for MH/DD services provided to county residents. Many consumers also participate in Title XIX Medical Assistance and food stamp programs run by the Department of Human Services (DHS).

Appeals about these "state cases" and DHS program eligibility decisions are governed by administrative agency rules and by the Iowa Administrative Procedures Act, Iowa Code Chapter 17A. More information about these appeals will be provided to consumers by the Department of Human Services.

Notices of Decision and Appeal Rights: Every decision regarding eligibility, services or funding will be issued in writing using a Notice of Decision form. We will also try our best to personally notify consumers about the decision. A copy of the Notice of Decision form we use can be found on page ____ or in Appendix ___. The first page (front) of the Notice of Decision will explain the:

- Date the decision was made
- Date that an appeal must be filed.
- Person or office who made the decision.
- Person or office who will hear and decide any appeal.
- Type of funding or service request made.
- Complete list of services and supports requested.
- Cost of each service and support.
- Action taken on the request, including the:
    - Services approved, partially funded or denied.
    - Effective date of the funding.
    - Consumer's financial contribution, if any.
    - Estimated length of time a consumer must wait to receive services when the consumer's name is placed on a waiting list.
    - Additional information that is needed to make a decision.
    - Records and information used to make the decision.
    - Services and supports that continue during the appeals process.
    - Legal services and advocacy programs that are available to assist consumers in reviewing and appealing the decision.

The second page (reverse side) of the Notice of Decision summarizes the Appeals Process that is explained in greater detail in this section. We recommend that you review the Notice of Decision the day you receive it. Read both sides of the document carefully, word by word and line by line. Call our office at the number listed later in this section with any questions or concerns. It is important that you act quickly to preserve your right to challenge the decision. A complete description of each stage of the appeals process follows, in the order they must be pursued.

FIRST APPEAL STAGE: This stage involves initial decisions which are made by Central Point Of Coordination (CPC) staff. Any appeal or complaint regarding that decision will be heard and decided by the Central Point of Coordination Administrator (CPCA), who oversees the delivery of services in our county.

If you disagree for any reason with the initial service, funding, or eligibility decision made by the CPC staff, you may appeal that decision to the CPC Administrator. To do so, you must notify us in writing by the deadline date printed on the first page of the Notice of Decision, which is ten (10) working days from the date of decision. You may mail, hand-deliver, or fax the written appeal request. We do not use a standard form. Any letter that questions or disputes the decision will be considered an appeal request.

We will use the postmark date to determine if the appeal was received by us on time. You may also call us to appeal the decision, but the call must be received by the deadline date and it must be noted in your case files. You can then visit our office or provide us with a written request within the next (five) days. All appeals must be directed to the office which is listed on the Notice of Decision, which is:(insert the name, address, title of the office which receives appeal requests).

If your appeal is not received by the appeal deadline date listed on the Notice of Decision, it will be denied, and the initial decision regarding your service, eligibility, or funding will be considered final.

The appeal should state that you do not agree with the decision, and explain why you believe the decision is incorrect. It should also describe the action you would like us to take. If you are unable to notify us on your own that you wish to appeal, a parent, guardian, provider, family member, lawyer, other advocate or authorized person may do so for you.

After we receive your timely-filed appeal, a meeting (hearing) will be scheduled to review the initial decision. You will receive a written notice that states the date, time and place the appeal will be heard. This document will be mailed to you to by certified mail and by first class mail, postage prepaid, no later than five (5) working days after we receive your appeal. We will also give you this information in person or by phone.

Our goal is to resolve disputes quickly and informally using only the procedures which are listed in this section. The appeal will be held in private. You have the right to have an attorney or other advocate accompany and represent you, but at your own expense. You may qualify for free legal assistance through the Legal Services Corporation of Iowa, the Iowa Volunteer Lawyers Project, Iowa Protection & Advocacy Services, Inc., or other organizations. A list of legal service and advocacy organizations appears on the Notice of Decision and later in this section. Consumers and their representatives also have the right to:

- Participate fully in the appeal or decide not to attend the appeal meeting.
- Review and copy the case files, records and information that were and will be used to make these decisions.
- Submit additional documents and evidence to support the requested funding and services.
- Bring and require witnesses to attend any appeal, and to participate, testify, or provide information, records and opinions to support the consumer's position and address the issues in dispute.
- Ask questions of anyone who attends the meeting.

- Record what happens at the meeting using their own equipment, at their sole expense.

- Have their personal information protected throughout the decision-making and appeals process.

- Be told -- in advance of the appeal meeting (hearing) -- the names and titles of the persons who will represent the County at the appeal.

The CPC Administrator will consider all the information that is presented during the appeal. Appeals should rarely, if ever, involve the consumer's entire clinical, medical or mental health history or records. The CPC Administrator should only consider and review information and records that are needed to address the particular and limited issue being decided. Mental health information, as defined by Iowa Code Chapter 228, can only be shared with the persons identified in that law. As a result, certain people attending the hearing or deciding the appeal may not be able to obtain this information. Additional information about privacy safeguards can be found in Section J.

A written Notice of Decision will be mailed to you no later than ten (10) working days after the appeal is heard. The Notice of Decision will be sent to you and to your legal or other authorized representative by certified mail, and by first class mail, postage prepaid, to make certain that you receive it. The Notice of Decision will completely explain the Administrator's decision and detail what is to happen next regarding your services and supports.

SECOND APPEAL STAGE: This stage involves decisions made by the Central Point of Coordination Administrator (CPCA) regarding eligibility, funding or services. Any appeal or complaint regarding the CPCA decision will be heard and decided by the Appeals Committee.

If you disagree for any reason with the decision made by the CPC Administrator, you may appeal that decision to the Appeals Committee. To do so, you must notify us in writing by the deadline date printed on the first page of the Notice of Decision, which is ten (10) working days from the date of decision. You may mail, hand-deliver, or fax the written appeal request. We do not use a standard form. Any letter that questions or disputes the decision will be considered an appeal request. We will use the postmark date to determine if the appeal was received by us on time. You may also call us to appeal the decision, but the call must be received by the deadline date and it must be noted in your case files. You can then visit our office or provide us with a written request within the next (five) days. All appeals must be directed to the office which is listed on the Notice of Decision, which is:(insert the name, address, title of the office which receives appeal requests).

If your appeal is not received by the appeal deadline date listed on the Notice of Decision, it will be denied, and the CPC Administrator's decision regarding your service, eligibility, or funding will be considered final.

The appeal should state that you do not agree with the decision, and explain why you believe the decision is incorrect. It should also describe the action you would like us to take. If you are unable to notify us on your own that you wish to appeal, a parent, guardian, provider, family member, lawyer, other advocate or authorized person may do so for you.

After we receive your timely-filed appeal, a meeting (hearing) will be scheduled to review the CPCA's decision. You will receive a written notice that states the date, time and place the appeal will be conducted. This document will be mailed to you to by certified mail and by first class mail, postage prepaid, no later than five (5) working days after we receive your appeal. We will also give you this information in person or by phone.

An Appeals Committee will be appointed to hear and decide your appeal. Three (3) people from the community who are interested in mental health and disability issues, and who do not have a personal interest in your case, will be randomly selected to hear your appeal. You will be provided with the names of the people who will serve on the Appeals Committee, before the hearing.

Our goal is to resolve disputes quickly and informally using only the procedures which are listed in this section. The appeal will be held in private. You have the right to have an attorney or other advocate accompany and represent you, but at your own expense. You may qualify for free legal services through the Legal Services Corporation of Iowa, the Iowa Volunteer Lawyers Project, Iowa Protection & Advocacy Services, Inc., or other organizations. A list of legal service and advocacy organizations appears on the Notice of Decision and later in this section. Consumers and their representatives also have the right to:

- Participate fully in the appeal or decide not to attend the appeal meeting.
- Review and copy the case files, records and information that were and will be used to make these decisions.
- Submit additional documents and evidence to support the requested funding and services.
- Bring and require witnesses to attend any appeal, and to participate, testify, or provide information, records and opinions to support the consumer's position and address the issues in dispute.
- Ask questions of anyone who attends the meeting.
- Record what happens at the meeting, using their own equipment, at their sole expense.
- Have their personal information protected throughout the decision-making and appeals process.

- Be told -- in advance of the appeal meeting (hearing) -- the names and titles of the persons who will represent the County at the appeal.

The Appeals Committee will consider all the information that is presented during the appeal. Appeals should rarely, if ever, involve the consumer's entire clinical, medical or mental health history or records. The Appeals Committee should only consider and review information and records that are needed to address the particular and limited issue being decided. Mental health information, as defined by Iowa Code Chapter 228, can only be shared with the persons identified in that law. As a result, certain people attending the hearing or deciding the appeal may not be able to obtain this information. Additional information about privacy safeguards can be found in Section J.

A written Notice of Decision will be mailed to you no later than ten (10) working days after the appeal is heard. The Notice of Decision will be sent to you and to your legal or other authorized representative by certified mail, and by first class mail, postage prepaid, to make certain that you receive it. The Notice of Decision will completely explain the Appeals Committee's decision and detail what is to happen next regarding your services and supports.

THIRD STAGE APPEAL: This stage involves decisions made by the Appeals Committee. Any appeal or complaint regarding the Appeals Committee decision will be heard by the County Board of Supervisors.

If you disagree for any reason with the decision made by the Appeals Committee, you may appeal that decision to the County Board of Supervisors. To do so, you must notify us in writing by the deadline date printed on the first page of the Notice of Decision, which is ten (10) working days from the date of decision. You may mail, hand-deliver, or fax the written appeal request. We do not use a standard form. Any letter that questions or disputes the decision will be considered an appeal request. We will use the postmark date to determine if the appeal was received by us on time. You may also call us to appeal the decision, but the call must be received by the deadline date and it must be noted in your case files. You can then visit our office or provide us with a written request within the next (five) days. All appeals must be directed to the office which is listed on the Notice of Decision, which is:(insert the name, address, title of the office which receives appeal requests).

If your appeal is not received by the appeal deadline date listed on the Notice of Decision, it will be denied, and the Appeals Committee's decision regarding your service, eligibility, or funding will be considered final.

The appeal should state that you do not agree with the decision, and explain why you believe the decision is incorrect. It should also describe the action you would like us to take. If you are unable to notify us on your own that you wish to appeal, a parent, guardian, provider, family member, lawyer, other advocate or authorized person may do so for you.

After we receive your timely-filed appeal, an appeal hearing will be scheduled. If possible, the Board of Supervisors will hear the appeal at its next regularly-scheduled

meeting. You will receive a written notice that states the date, time and place the appeal will be heard and the names of the Supervisors. This document will be mailed to you by certified mail and by first class mail, postage prepaid, no later than ten (10) working days after we receive your appeal. We will also give you this information in person or by phone. At times, the Board of Supervisors must consult with experts to help them better understand the mental health and other complex issues involved in disability matters. You will be told, in advance of the hearing, the names and credentials of the people who will participate in the hearing, provide information to the Board of Supervisors, or represent the county at the hearing.

Our goal is to resolve disputes quickly and informally. However, the Board of Supervisors must follow the Iowa Open Meetings Law, Chapter 21 of the Iowa Code when hearing MH/DD appeals. The general rule is that all matters must be discussed in open session, with members of the public, the press and other media allowed to be present. You may request that your hearing be closed to protect your confidentiality and privacy.

In our county, the Board of Supervisors meets in closed session - unless you request that the public and media be present - to review and decide MH/DD matters. They do so because the appeals involve medical, mental health and other records which are required or authorized by state or federal law to be kept confidential. Your name will not appear on the agenda, in the minutes, or in other materials which are posted published or publicly broadcast. The proceedings will not be televised or broadcast without your written permission. Privacy and confidentiality policies are addressed in more detail in Section J.

You have the right to have an attorney or other advocate accompany and represent you, but at your own expense. You may qualify for free legal assistance through the Legal Services Corporation of Iowa, the Iowa Volunteer Lawyers Project, Iowa Protection & Advocacy Services, Inc., or other organizations. A list of legal services and advocacy organizations appears on the Notice of Decision and later in this section. Consumers and their representatives also have the right to:

- Participate fully in the appeal or decide not to attend the appeal meeting.
- Review and copy the case files, records and information that were and will be used to make these decisions.
- Submit additional documents and evidence to support the requested funding and services.
- Bring and require witnesses to attend any appeal, and to participate, testify, or provide information, records and opinions to support the consumer's position and address the issues in dispute.
- Ask questions of anyone who attends the meeting.

- Record what happens at the meeting using their own equipment, at their sole expense.

- Have their personal information protected throughout the decision-making and appeals process.

- Be told -- in advance of the appeal meeting (hearing) -- the names and titles of the persons who will represent the County at the appeal.

The Board of Supervisors will consider all the information that is presented during the appeal. Appeals should rarely, if ever, involve the consumer's entire clinical, medical or mental health history or records. The Board of Supervisors should only consider and review information and records that are required to address the particular issue being decided. Mental health information, as defined by Iowa Code Chapter 228, can only be shared with persons identified in that law. As a result, certain people attending the hearing or deciding the appeal, including individual Supervisors, may not be able to obtain this information. Additional information about privacy safeguards can be found in Section J.

A written decision will be mailed to you no later than ten (10) working days after the appeal is heard. The decision will be sent to you and to your legal or other authorized representative by certified mail, and by first class mail, postage prepaid, to make certain that you receive it. It will completely explain the Board of Supervisors' findings, conclusions and ultimate decision, and will detail what is to happen next regarding your services and supports.

JUDICIAL AND OTHER APPEALS: This stage involves decisions made by the Board of Supervisors regarding services, supports and funding. These Board of Supervisor decisions must be appealed to a court of law.

The Board of Supervisors makes the final administrative decision at the county level, except for "state cases" and DHS program matters. If you disagree with the Board of Supervisors' decision regarding services, supports or funding, you can appeal to the Iowa District Court In and For County. This is generally done using a procedure known as a Writ of Certiorari. There are very strict time limits and procedural rules for filing these appeals. If you do not act immediately, you may lose all your rights to challenge the Board of Supervisors' decision.

You may have additional appeal rights and avenues, depending on your particular case and circumstances. We strongly urge you to consult with a lawyer as soon as possible if you disagree with the Board of Supervisors' decision. The County does not provide you with a lawyer or pay for your attorney fees except in cases involving commitment hearings. You may qualify for no-cost or low-cost legal services. For information, referrals and representation, contact the:

- Legal Services Corporation of Iowa at 800-532-1503 or 800-532-1275 or 515-280-3636 (Voice/TTY),
- Iowa Volunteer Lawyer Project at 800-325-2909 or 515-244-8617,

- Iowa Protection & Advocacy Services, Inc., at 800-779-2502 or 515-278-2502 or 515-278-0571 (TTY),
- Center for Independent Living in your area,
- Or Call InfoTech at 800-331-3027 for information and referral on assistive technology
- Or Call Iowa COMPASS at 800-779-2001 for information and referral on services for Iowans with disabilities.

---

5. Notice of Decision Form (front page)

DATE OF DECISION: _(date)__ **APPEAL DEADLINE:** _(date 14 days later)__

FROM: Insert Your CPC OFFICE or Other Decision-Maker and Address

TO: CONSUMER and Designated Representative(s) and Address
PROVIDER and Address

REQUEST:

__ Eligibility determination
__ Funding/services request
__ Review or appeal of previous decision
__ Other _____

DECISION:

__ Eligible
__ Not Eligible
__ Funding Approved
__ Funding Denied
__ Partial Funding
__ Waiting List
__ No Action Taken
__ Other _____

EXPLANATION OF DECISION: You requested that we determine your eligibility and/or fund the following services, supports and costs:_____.

(Choose, complete fully, and insert one of these options:)

1. We approved your request in full, effective _(date)__ through _(date)__, and your financial contribution is _$##.00_.
2. We were only able to approve your request in part, for the following reasons:

We will fund the following services:
Your financial contribution is $00.00:

3. We denied your request, for the following reasons: :
   The following services will continue to be provided to you during any appeal proceedings:
4. We could not act on your request because: Call our office when you receive this Notice.
5. Your application was approved but you have been placed on a waiting list for the following services ; estimated length of time on the waiting list is :

In reaching our decision, we used records and information from:_____.

If you have any questions, want more information, or disagree in any respect with our decision, call us at _###-###-####_ when you receive this notice. **You have the right to appeal any part of this decision. The appeal must be in writing and must be received by our office on or before** __(date)__**. The names, addresses and phone numbers of persons and organizations who can assist you in any appeal are listed on the other side of this page and in the Policy and Procedures Manual.**

SEE REVERSE SIDE FOR
APPEALS PROCESS RIGHTS

6. Appeals Process Form (back page or reverse of Notice of Decision): This form involves decisions made by CPCAs which are appealed to the County Board of Supervisors. Appeals Process (to County Board of Supervisors)

If you disagree at all with the Central Point of Coordination Administrator's (CPCA's) decision, you have the right to appeal. The County Board of Supervisors will hear and decide your case. You can have a lawyer, friend or someone else assist you in the appeals, at your expense.

It is very important that you follow the directions and meet the deadlines listed below. Failure to do so will result in the immediate denial of your appeal. When we refer to "days" we mean working days. Working days are Monday through Friday and do not include Saturdays, Sundays or holidays.

WHAT YOU SHOULD DO IMMEDIATELY IF YOU WANT TO APPEAL:

- To preserve your appeal rights, you must notify us in writing that you disagree with the decision and want to appeal it. The appeal request must be received by the County Board of Supervisors by the Appeal Deadline Date listed on the other side of this page, which is ten (10) days after the date of the CPCA's decision. We will use the postmark date to determine if the appeal request was received

by us on time. In the request, tell us why you disagree with the decision and what you would like to have happen. Your request must be mailed to the Board of Supervisors at:

WHAT HAPPENS NEXT:

- The Board of Supervisors will hear and decide your appeal.
- You will be notified by certified mail of the time, date and place the appeal will be heard. The notice will be sent to you no later than ten (10) days after we receive your written appeal request. It will include the names of the Board members and the names and credentials of the people who will participate in the hearing, provide information or testimony to the Board, or represent the County during the appeal hearing.
- The Board of Supervisor's written decision will be sent to you by certified mail no later than ten(10) after the appeal hearing. It will explain the Board's decision, how and why it was made, and what you must do next if you disagree with any part of the decision.

YOU HAVE THE RIGHT TO:

- Review all documents that will be used to decide your case, before the Board of Supervisors meets.
- Submit and present any evidence that supports your position to the County Board of Supervisors, before, during and after the appeal hearing.
- Have any witnesses appear in support of your position.
- Ask any questions of those participating in the appeal.
- Appear in person at the appeal or have a lawyer or someone else appear for you. Either way, the Board of Supervisors will make a decision.
- Have an attorney or advocate represent you, at your own expense. The County will not pay your attorney fees. Attorneys and organizations that may be able to assist you include:_____.
- Have your personal information kept private and confidential during the appeals process.
- Be told who will represent the county or testify on behalf of the county during any appeal.

See Section K of the Policy and Procedures Manual for detailed information about the appeals process.

---

7. Appeals Process Form (back page or reverse of Notice of Decision): This form involves decisions made by CPCAs which are appealed directly to an Appeals Committee.

If you disagree at all with the Central Point Of Coordination Administrator's (CPCA's) decision, you have the right to appeal. A panel of three (3) community members interested in mental health and developmental disability issues will hear and decide

the appeal. You can have a lawyer, friend or someone else assist you in the appeal, at your expense.

It is very important that you follow the directions and meet the deadlines listed below. Failure to do so will result in the immediate denial of your appeal. When we refer to "days" we mean working days. Working days are Monday through Friday and do not include Saturdays, Sundays or holidays.

WHAT YOU SHOULD DO IMMEDIATELY IF YOU WANT TO APPEAL:

- To preserve your appeal rights, you must provide us with a written appeal request. The request must be received by the Insert Your CPC Office or Other Office by the Appeal Deadline Date listed on the other side, which is ten (10) days from the date of the decision. We will use the postmark date to determine if the appeal request was received by us on time. In the request, tell us why you disagree with the decision and what you would like to have happen. Your request must be mailed to the Insert Your Office or Other Office, and Address.

WHAT HAPPENS NEXT:

- An Appeals Committee will be appointed to hear and decide your case. Three (3) people from the community who are interested in mental health and disability issues, and who do not have a personal interest in your case, will be randomly selected to conduct your appeal.
- You will receive a written notice by certified mail no later than five (5) days after the date your appeal request is received. The notice will tell you the date, time and place the Committee will meet to review your case, and provide you with the names of the Committee members.
- The appeal will be conducted within ten (10) days of the date your appeal request was received.
- The Appeals Committee's written decision will be sent to you by certified mail no later than ten (10) days after the review. This Notice of Decision will provide you with an explanation of the Appeals Committee's decision. It will also have information about your right to appeal the Committee's decision to the County Board of Supervisors, if you do not agree with the decision.

YOU HAVE THE RIGHT TO:

- Review all documents that will be used to decide your case, before the Appeals Committee meets.
- Submit and present any evidence that supports your position to the Insert Your Office or Other Office before, during and after the Appeals Committee review.
- Have any witnesses appear in support of your position.
- Ask any questions of those participating in the review.
- Appear in person at the review or have a lawyer or someone else appear for you. Either way, the Appeals Committee will make a decision.
- Have an attorney or advocate represent you, at your own expense. The County will not pay your attorney fees. Attorneys and organizations that may be able to assist you include:_____.

- Have your personal information kept private and confidential during the appeals process.

See Section K of the Policy and Procedures Manual for detailed information about the appeals process.

IPAT is supported by the National Institute on Disability and Rehabilitation Research, United States Department of Education (NIDRR/ED). This material does not necessarily reflect the views of NIDRR/ED or indicate official endorsement of their contents.

InfoTech, Iowa Program for Assistive Technology, Center for Disabilities and Development, 100 Hawkins Drive, Room 295, Iowa City, Iowa 52242-1011

IPAT/Home InfoTech Funding UERS AT Legal Project Publications Links Disclaimer

---

IPAT/InfoTech is proud to be **Find out more about this logo and accessible page design**. Also check out the booklet, **Accessible Web Designs** for more information.

DISCLAIMER

The contributors to this web site strive to provide reliable information. Every day, experience and research expand our knowledge in the area of assistive technology. Therefore, neither the authors, the University of Iowa, nor any other party involved in creating these web pages guarantees that the information they contain is 100% accurate or complete. The above named are not responsible for any errors, omissions, or for the results obtained from the use of this information.

We encourage you to seek multiple sources of information and to discuss what you find here with others, including other providers of assistive technology information and services.

CONTACT US

Iowa Residents--To find out more information on assistive technology to assist your child with school or in transitioning to college or a job, contact:

Iowa COMPASS
Center for Disabilities and Development
100 Hawkins Drive, Room S295
Iowa City, IA 52242-1011

800-779-2001 (voice toll-free)
800-877-0032 (TTY toll-free)
319-353-8777 (local-voice)

Exhibit 3

MH/DD COUNTY MANAGEMENT PLAN GRID

County	Appeals Process	Type of Appeal	Date of Plan*
Adair	CPC → Board of Supervisors	Unknown	2000-03
Adams	CPC → Board of Supervisors	Unknown	2000-03
Allamakee	CPC → Optional Appeals Board→ Board of Supervisors→ ALJ→ District Ct.	Iowa Code § 17A	2001
Appanoose	CPC → Unknown (appeal process on NOD**)	Unknown	2004
Audubon	CPC → Board of Supervisors	Unknown	2000
Benton	CPC → Board of Supervisors→ District Ct.	Writ of Cert.	2001
Black Hawk	CPC → Board of Supervisors→ District Ct.	Per Iowa Code	2005
Boone	CPC → Board of Supervisors	Unknown	2001-03
Bremer	CPC → Board of Supervisors	Unknown	2000
Buchanan	CSD → Optional Planning Council Review→ Board of Supervisors→ District Ct.	Iowa Code § 17A	N/A ***
Buena Vista	CPC → Appeals Board (which is the Board of Supervisors)	Unknown	2000
Butler	CPC → Board of Supervisors	Unknown	2000-03
Calhoun	CPC → Board of Supervisors→ District Ct.	Iowa Code § 17A	2001
Carroll	CPC → Board of Supervisors	Unknown	2000
Cass	CPC → Board of Supervisors	Unknown	N/A
Cedar	CPC → Unknown (appeal process on NOD)	Unknown	2001
Cerro Gordo	CPC → Appeal Panel (appointed by the Board of Supervisors)	Unknown	2003-06
Cherokee	CPC → Board of Supervisors	Unknown	N/A
Chickasaw	Director of Mental Health Serv. → Board of Supervisors→ Review Panel	Unknown	N/A
Clarke	CPC → Board of Supervisors	Unknown	2000-03
Clay	CPC → Impartial Appeals Board → District Ct.	Unknown	N/A
Clayton	CPC → Unknown (appeal process on NOD)	Unknown	2005-06
Clinton	CPC → Board of Supervisors→ District Ct.	Iowa Code § 17A	N/A
Crawford	CPC → Board of Supervisors	Unknown	2000
Dallas	CPC → Board of Supervisors	Unknown	2001-03
Davis	CPC → Board of Supervisors→ District Ct.	Iowa Code § 17A	2006-08

MH/DD COUNTY MANAGEMENT PLAN GRID

Decatur	**CPC → Board of Supervisors→ ALJ→ District Ct.**	**Writ of Cert.**	2005
Delaware	**CPC → Board of Supervisors**	**Iowa Code § 17A**	N/A
Des Moines	**CPC → Board of Supervisors**	**Unknown**	2000
Dickinson	**CPC → Appeals Board (which is the Board of Supervisors)**	**Unknown**	2000
Dubuque	**CPC → Board of Supervisors→ District Ct.**	**Unknown**	2001
Emmet	**CPC → Board of Supervisors→ District Ct.**	**Unknown**	N/A
Fayette	**CPC → Board of Supervisors→ ALJ**	**Unknown**	2001
Floyd	**CPC → Board of Supervisors→ District Ct.**	**Unknown**	2000
Franklin	**CPC → Board of Supervisors**	**Unknown**	2000
Fremont	**CPC → Board of Supervisors**	**Unknown**	2001-04
Greene	**CPC → Board of Supervisors**	**Unknown**	2000
Grundy	**CPC → Board of Supervisors**	**Unknown**	N/A
Guthrie	**CPC → Board of Supervisors**	**Unknown**	2000
Hamilton	**CPC → Board of Supervisors→ Independent Review Board (Final)**	**Unknown**	2007-09
Hancock	**CPC → Board of Supervisors→ District Ct.**	**Unknown**	2000
Hardin	**CPC → Board of Supervisors**	**Unknown**	2000
Harrison	**CPC → Board of Supervisors**	**Unknown**	2000
Henry	**CPC → Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	N/A
Howard	**Community Services Director → Appeals Panel→ Board of Supervisors**	**Unknown**	2000
Humboldt	**CPC → Board of Supervisors**	**Unknown**	2000
Ida	**CPC → Board of Supervisors**	**Unknown**	2000
Iowa	**CPC → Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	2000
Jackson	**CPC → Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	N/A
Jasper	**CPC → Appeals Committee→ Board of Supervisors**	**Unknown**	2000
Jefferson	**CPC → Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	2000
Johnson	**Director of MH/DD Services→ Board of Supervisors**	**Unknown**	2000
Jones	**CPC → CPC & Team→ Mental Health Advisory Bd.→ Board of Supervisors**	**Unknown**	N/A
Keokuk	**CPC → Board of Supervisors→ District Ct.**	**Writ of Cert.**	2001-03
Kossuth	**CPC → Board of Supervisors**	**Unknown**	2001-03
Lee	**CPC → Board of Supervisors**	**Unknown**	2000

MH/DD COUNTY MANAGEMENT PLAN GRID

Linn	**CPC → Exec. Dir., Linn Co. Dep't of Human Resources → Bd. of Supervisors**	**Unknown**	2001
Louisa	**CPC → Board of Supervisors**	**Unknown**	2000
Lucas	**CPC → Board of Supervisors→ District Ct.**	**Writ of Cert.**	2000
Lyon	**CPC → Board of Supervisors**	**Unknown**	2000
Madison	**CPC → Board of Supervisors**	**Unknown**	2001-03
Mahaska	**CPC → Board of Supervisors**	**Unknown**	N/A
Marion	**CPC → Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	2000
Marshall	**CPC → Board of Supervisors**	**Unknown**	2000
Mills	**CPC → Board of Supervisors**	**Unknown**	2000
Mitchell	**CPC → Board of Supervisors**	**Unknown**	2000
Monona	**CPC → Board of Supervisors**	**Unknown**	2000
Monroe	**CPC → Unknown (appeal process on NOD)**	**Unknown**	2001-03
Montgomery	**CPC → Board of Supervisors**	**Unknown**	2000
Muscatine	**CPC → Board of Supervisors**	**Unknown**	2000
O'Brien	**CPC → Appeals Board (which is the Board of Supervisors)**	**Unknown**	2000-03
Osceola	**CPC → Appeals Board (which is the Board of Supervisors)**	**Unknown**	2000
Page	**CPC → Page Co. MH/DD Council→ Board of Supervisors→ District Ct.**	**Writ of Cert.**	2000
Palo Alto	**CPC → Board of Supervisors**	**Unknown**	2000
Plymouth	**CPC → Board of Supervisors**	**Unknown**	2000
Pocahontas	**CPC → Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	2001
Polk	**DCFS Director or Polk Co. Health Services Dir.→ Cluster Board→ Bd. of Super→ District Ct**	**Iowa Code § 17A**	2003
Pottawattamie	**CPC → Board of Supervisors**	**Unknown**	2000
Poweshiek	**CPC → Board of Supervisors**	**Unknown**	2001
Ringgold	**CPC → Board of Supervisors**	**Unknown**	2001
Sac	**CPC → Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	2000
Scott	**CPC → Board of Supervisors**	**Unknown**	2000
Shelby	**CPC → Board of Supervisors**	**Unknown**	2000
Sioux	**CPC → Board of Supervisors**	**Unknown**	2000
Story	**CPC → Board of Supervisors**	**Unknown**	2000
Tama	**CPC → Board of Supervisors→ ALJ→ District Ct.**	**Unknown**	2004

MH/DD COUNTY MANAGEMENT PLAN GRID

Taylor	**CPC → Board of Supervisors**	**Unknown**	2000-03
Union	**CPC → Board of Supervisors**	**Unknown**	2000-03
Van Buren	**CPC → Appeals Committee→ Board of Supervisors→ District Ct.**	**Writ of Cert.**	N/A
Wapello	**CPC → Appeals Committee→ 28E Contracting Consortium Bd.→ District Ct.**	**Writ of Cert.**	2007-09
Warren	**Board of Supervisors→ District Court**	**Iowa Code § 17A**	N/A
Washington	**CPC → Board of Supervisors→ District Ct.**	**Writ of Cert.**	2000
Wayne	**CPC → Board of Supervisors→ District Ct.**	**Writ of Cert.**	2000
Webster	**CPC → Appeals Committee→ Board of Supervisors→ District Ct.**	**Writ of Cert.**	N/A
Winnebago	**CPC → Board of Supervisors→ District Ct.**	**Unknown**	2000
Winneshiek	**CPC → Optional Appeals Board→ Board of Supervisors→ District Ct.**	**Iowa Code § 17A**	2000
Woodbury	**CPC → Board of Supervisors**	**Unknown**	2001
Worth	**CPC → Board of Supervisors→ District Ct.**	**Unknown**	2000
Wright	**CPC → Board of Supervisors**	**Unknown**	N/A
	No appeals process in plan, but on Notice of Decision (NOD)		
	4 Counties do not have the appeals process outlined in their County Management Plan		
*** Date of plan is according to plans provided on the DHS website.**			
**** NOD = Notice of Decision**			
***** N/A = Not Available**			
The information on this spreadsheet is based on public information			

Exhibit 4

United States District Court,
N.D. Iowa,
Western Division.

Maximo SALCIDO, by his next friend, Amelia GILLILAND, Plaintiff,
v.
WOODBURY COUNTY, IOWA; Jessie Rasmussen, in her official capacity as Director of the Iowa Department of Human Services; and Thomas L. Vilsack, in his official capacity as Governor of the State of Iowa, Defendants.

No. C 98-4113-MWB.

Oct. 30, 2000.

Mentally ill patient brought action against county, governor and director of state department of human services, alleging violations of equal protection clause, due process clause, Americans with Disabilities Act (ADA), and Rehabilitation Act arising from defendants' failure to initially place him in institution to which he was committed. Defendants moved to dismiss claims. Following District Court's determination that Eleventh Amendment did not bar suit, 66 F.Supp.2d 1035, parties moved and cross moved for summary judgment. The District Court, Bennett, Chief Judge, held that: (1) patient had Fourteenth Amendment substantive right or liberty interest in a placement appropriate to his condition; (2) his procedural due process rights were violated by Iowa statute that failed to provide notice and hearing following denial of his request for appropriate placement; (3) his procedural due process rights were violated when county board of supervisors heard appeal from denial of request, which was based on county's refusal to pay costs of services; (4) state officials did not violate Americans with Disabilities Act (ADA) or Rehabilitation Act (RA) by denying patient admission to facility based on county's refusal to pay costs; (5) county discriminated against patient in violation of ADA and RA; (6) county failed to effectively assert unreasonableness of accommodation as affirmative defense to ADA and RA claims; and (7) as between state and county, latter was liable for costs in question. Motions denied in part, granted in part.

West Headnotes

[1] KeyCite Notes

92 Constitutional Law
92XII Due Process of Law
92k255 Deprivation of Life or Liberty in General
92k255(5) k. Diseased and Mentally Disordered Persons; Addicts. Most Cited Cases

257A Mental Health KeyCite Notes
257AII Care and Support of Mentally Disordered Persons
257AII(A) Custody and Cure
257Ak51 Restraint or Treatment
257Ak51.1 k. In General. Most Cited Cases

Mental patient had substantive right or liberty interest in an appropriate placement in mental health facility, protected by Fourteenth Amendment, as result of his involuntary commitment for serious mental impairment. U.S.C.A. Const.Amend. 14.

[2] KeyCite Notes

92 Constitutional Law
92XII Due Process of Law
92k255 Deprivation of Life or Liberty in General
92k255(5) k. Diseased and Mentally Disordered Persons; Addicts. Most Cited Cases

Involuntarily committed mental patient has liberty interest, protected by Fourteenth Amendment, in receiving minimally adequate or reasonable training to ensure safety and freedom from undue restraint. U.S.C.A. Const.Amend. 14.

[3] KeyCite Notes

92 Constitutional Law
92XII Due Process of Law
92k255 Deprivation of Life or Liberty in General
92k255(5) k. Diseased and Mentally Disordered Persons; Addicts. Most Cited Cases

Fourteenth Amendment does not require that involuntarily committed mental patient receive optimal treatment. U.S.C.A. Const.Amend. 14.

[4] KeyCite Notes

92 Constitutional Law
92XII Due Process of Law
92k255 Deprivation of Life or Liberty in General
92k255(5) k. Diseased and Mentally Disordered Persons; Addicts. Most Cited Cases

257A Mental Health KeyCite Notes
257AII Care and Support of Mentally Disordered Persons
257AII(A) Custody and Cure
257Ak32 k. Constitutional and Statutory Provisions. Most Cited Cases

Iowa statute governing involuntary commitment to mental institution violated mental patient's Fourteenth Amendment liberty interest in an appropriate placement, by failing to provide notice or a hearing addressing denial by county, through its system of paying medical costs, of its obligation to pay for patient's care at state mental health facility. I.C.A. §§ 229.1, 331.39, 331.440.

[5] KeyCite Notes

92 Constitutional Law
92XII Due Process of Law

92k255 Deprivation of Life or Liberty in General
92k255(5) k. Diseased and Mentally Disordered Persons; Addicts. Most Cited Cases
257A Mental Health KeyCite Notes

257AII Care and Support of Mentally Disordered Persons
257AII(B) Support
257Ak82 Proceedings to Enforce Liability for Support
257Ak86 k. Execution and Enforcement of Judgment, and Review. Most Cited Cases

Procedural due process rights of mental patient were violated when county's refusal to assume financial responsibility for his placement in facility designated as appropriate by medical authorities was appealed to county board of supervisors, which had responsibility of holding down medical costs. U.S.C.A. Const.Amend. 14; I.C.A. §§ 229.1, 331.439, 331.440.

[6] KeyCite Notes

170B Federal Courts
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(A) In General
170Bk268 What Are Suits Against States
170Bk269 k. State Officers or Agencies, Actions Against. Most Cited Cases

170B Federal Courts KeyCite Notes
170BIV Citizenship, Residence or Character of Parties, Jurisdiction Dependent on
170BIV(A) In General
170Bk268 What Are Suits Against States
170Bk272 k. Injunctive or Mandatory Relief; Declaratory Judgments. Most Cited Cases

Mental patient could, without violating Eleventh Amendment, sue state officials, in their official capacities, seeking prospective injunctive relief precluding officials from interfering with his right to receive appropriate treatment under Americans with Disabilities Act (ADA) and Rehabilitation Act (RA), even though suit was based upon past and current actions of officials in approving health plan offered by county that included allegedly discriminatory refusal to pay for medically designated care and failure to admit him to facility based on plan. U.S.C.A. Const.Amend. 11; Rehabilitation Act of 1973, § 504(a), as amended, 29 U.S.C.A. § 794(a); Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[7] KeyCite Notes

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1043 Public Accommodations
78k1045 k. Medical Facilities and Services. Most Cited Cases
(Formerly 78k119.5, 78k119.1)

78 Civil Rights KeyCite Notes
78I Rights Protected and Discrimination Prohibited in General
78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1))

257A Mental Health KeyCite Notes
257AII Care and Support of Mentally Disordered Persons
257AII(A) Custody and Cure
257Ak51 Restraint or Treatment
257Ak51.20 k. Actions and Proceedings. Most Cited Cases

257A Mental Health KeyCite Notes
257AII Care and Support of Mentally Disordered Persons
257AII(B) Support
257Ak78 Public Authorities, Liability
257Ak78.1 k. In General. Most Cited Cases

State officials in charge of mental institution did not violate rights of mental patient, under Americans with Disabilities Act (ADA) and Rehabilitation Act (RA), by denying admission based upon county's refusal to pay for patient's care. Rehabilitation Act of 1973, § 504(a), as amended, 29 U.S.C.A. § 794(a); Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[8] KeyCite Notes

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1051 Public Services, Programs, and Benefits
78k1053 k. Discrimination by Reason of Handicap, Disability, or Illness. Most Cited Cases
(Formerly 78k107(1))

257A Mental Health KeyCite Notes
257AII Care and Support of Mentally Disordered Persons
257AII(B) Support
257Ak78 Public Authorities, Liability
257Ak78.1 k. In General. Most Cited Cases

Mental patient suffering from dementia was qualified individual with disability, for purposes of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA), by virtue of Iowa statute providing for county or state payment of costs of patient with "mental illness," despite claim of county that patient was not qualified since dementia was not covered under county's mental health services management plan. Rehabilitation Act of 1973, §§ 7(20), 504(a), as amended, 29 U.S.C.A. §§ 705(20), 794(a); Americans with Disabilities Act of 1990, § 201(2), 42 U.S.C.A. § 12131(2); I.C.A. § 230.1.

[9] KeyCite Notes

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1030 Acts or Conduct Causing Deprivation
78k1037 k. Malicious Prosecution and False Imprisonment; Mental Health Commitments. Most Cited Cases
(Formerly 78k107(1))

257A Mental Health KeyCite Notes
257AII Care and Support of Mentally Disordered Persons
257AII(B) Support
257Ak78 Public Authorities, Liability
257Ak79 k. Counties and Towns. Most Cited Cases

County discriminated against mental patient suffering from dementia based upon disability, in violation of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA), by declining to pay for placement of patient in mental health facility, when county was under state statutory duty to pay for involuntary commitment of persons suffering from mental illnesses generally. Rehabilitation Act of 1973, § 504(a), as amended, 29 U.S.C.A. § 794(a); Americans with Disabilities Act of 1990, § 201(2), 42 U.S.C.A. § 12131(2); I.C.A. §§ 229.1, subd. 7, 230.1.

[10] KeyCite Notes

78 Civil Rights
78III Federal Remedies in General
78k1392 Pleading
78k1398 k. Defenses; Immunity and Good Faith. Most Cited Cases
(Formerly 78k238)

257A Mental Health KeyCite Notes
257AII Care and Support of Mentally Disordered Persons
257AII(B) Support
257Ak78 Public Authorities, Liability
257Ak79 k. Counties and Towns. Most Cited Cases

County failed to show unreasonableness of requirement that it pay for care of mental patient suffering from dementia, as required under state statute, as affirmative defense to claim that refusal was violation of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA), by making conclusory allegation of unreasonableness. Rehabilitation Act of 1973, § 504(a), as amended, 29 U.S.C.A. § 794(a); Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

[11] KeyCite Notes

257A Mental Health
257AII Care and Support of Mentally Disordered Persons
257AII(B) Support
257Ak78 Public Authorities, Liability
257Ak79 k. Counties and Towns. Most Cited Cases

As between county and state, county was liable for payment of medical costs incurred by mental health patient suffering from dementia, at state facility, despite claim that payment was not authorized by county's payment procedures. I.C.A. § 230.1.

**902* Frank Tenuta of Legal Services Corp. of Iowa, Sioux City, IA, for Plaintiff.
Doug Phillips of Klass, Stoik, Mugan, Villone Phillips, Orzechowski, Clausen & Lapierre, L.L.P., Sioux City, IA, for Defendant Woodbury County.
Gordon E. Allen, Deputy Iowa Atty. Gen., Mary W. Vavroch, Asst. Iowa Atty. Gen., Des Moines, IA, for State Defendants, Governor Thomas L. Vilsack and Director Jessie Rasmussen.

MEMORANDUM OPINION AND ORDER REGARDING THE PARTIES' MOTIONS FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT

BENNETT, Chief Judge.

TABLE OF CONTENTS

**903* Who pays? That question often animates legal disputes between private persons or entities, but here it animates a dispute involving an individual who has been involuntarily committed pursuant to Iowa law, his "county of legal settlement," the governor of the state, and the director of the state department of human services. The plaintiff brought this action seeking a determination of whether the state or the county must pay for his placement at a state mental health institute. To compel that determination, the plaintiff has brought claims against the defendants for violation of his constitutional rights to equal protection and substantive and procedural due process, and disability discrimination claims pursuant to the Rehabilitation Act and Title II of the Americans with Disabilities Act. The state officials filed a cross-claim against the county seeking to compel the county to pay for the plaintiff's placement. All of the parties have now filed motions for summary judgment, which may resolve many of the claims at issue, at least in part.

I. INTRODUCTION

A. Factual Background

Although the court provided some factual background to the present dispute in its ruling on a motion to dismiss in September of 1999, *see* Salcido v. Woodbury County, Iowa, 66 F.Supp.2d 1035 (N.D.Iowa 1999), the parties' factual statements in support of the summary judgment motions presently before the court provide a much more detailed picture. Nevertheless, what is presented here is primarily a statement of the nucleus of undisputed facts and essential factual disputes necessary to put the parties' motions for summary judgment or partial summary judgment in context, rather than an exhaustive dissertation of the undisputed and disputed facts as asserted by the parties.[FN1]

FN1. Indeed, the State Defendants concur with the facts as set out in Salcido's brief in support of his motion for summary judgment, adding only a few additional facts.

1. Salcido's commitment and placements

Plaintiff Maximo Salcido, who is now 61 years old, was

diagnosed in 1998 as suffering from dementia-secondary to multiple etiologies-and a mood disorder. On June 29, 1998, Dr. Davidson of Sioux City Neurology wrote a "To Whom It May Concern" letter in which he noted that Salcido had disinhibited behavior and was very abusive and aggressive, that Salcido's rehabilitation potential was poor, and that he is a danger to himself and others. Consequently, on July 8, 1998, affidavits were prepared by health care professionals pursuant to IOWA CODE CH. 229 alleging that Salcido was seriously mentally impaired and should be immediately taken into custody. The affidavits were filed on July 9, 1998, which commenced the civil commitment proceedings from which the present lawsuit arises.

Based on the affidavits, on July 9, 1998, the hospitalization referee entered an "Order for Immediate Custody Pursuant to Section 229.11, The Code," in which the referee ordered that Salcido be immediately detained at Marian Health Center until a hearing set for July 15, 1998. The referee also appointed attorney Wil Forker to represent Salcido and appointed Dr. P. ***904** Muller to conduct a personal examination of Salcido to determine whether Salcido was seriously mentally impaired as defined in IOWA CODE § 229.1(14). Following the hearing on July 15, 1998, at which Mr. Forker appeared on behalf of Salcido [FN2] and Dr. Muller's report was entered into evidence, the referee found that Salcido was seriously mentally impaired, as defined by the Iowa Code, and was in need of immediate residential treatment as recommended by Dr. Muller. The referee also entered an order noting that Dr. Muller had recommended that, although Salcido remained mentally impaired, he was no longer in need of acute in-patient treatment. Therefore, the referee ordered that Salcido remain at Marian Health Center pending transfer to Clarinda Mental Health Institute (CMHI), a state mental health facility.

FN2. Counsel waived Salcido's personal presence at this hearing.

Next, on July 27, 1998, the referee ordered Salcido transferred to CMHI. CMHI initially indicated that it would accept Salcido under court order for the next available male bed. However, in late July of 1998, CMHI informed Marian Health Center that it would not accept Salcido, because defendant Woodbury County would not authorize Salcido's placement at CMHI. CMHI reported that the County had informed CMHI that Salcido's placement at CMHI would violate the County's Mental Health Services Management Plan.

An attempt to find state funding for Salcido's placement at CMHI failed when Merit Behavior Corporation, which contracts with the State of Iowa to administer mental health funds, including Title XIX funds, notified Marian Health Center and Salcido on August 4, 1998, that the State would not fund Salcido's placement at CMHI. Merit explained that residential services were not covered by the state's Merit Behavioral Care Mental Health Access Plan. The County contends that neither Salcido nor Marian Health Center pursued a grievance under the procedures afforded by Merit concerning Merit's denial of funding for Salcido's care at CMHI.

Attempts to find an alternative placement for Salcido also failed. The hospitalization referee entered an amended order on August 6, 1998, and an amended and substituted order on August 12, 1998, transferring Salcido from Marian Health Center to a suitable nursing home, skilled nursing home, or Alzheimer's facility. However, on August 27, 1998, Marian Health Center, through counsel, informed the referee that it had contacted eleven facilities, but all had declined to accept Salcido.

At about the same time, renewed attempts were made to obtain funding from the County for Salcido's placement at CMHI. On August 7, 1998, Assistant County Attorney Ann Long sent the referee a letter advising him that Marian Health Center should apply to the County's mental health funding management company, Tri-State Behavioral Health Care Association (Tri-State), for funding for Salcido's placement. Ms. Long's letter noted, however, that Salcido was currently receiving Title XIX benefits under the state mental health access plan, that Salcido had a "cognitive disorder, not a mental illness," and that Tri-State would likely deny Salcido's application for County funds. Plaintiff's Documents in Support of Summary Judgment at 18. In response to this letter, Dr. Muller sent a letter dated August 19, 1998, to Tri-State explaining his diagnosis of Salcido's condition and appealing the denial of funding under the County's Management Plan.

On September 24, 1998, the referee entered an order appointing Frank Tenuta to represent Salcido in place of Mr. Forker. Mr. Tenuta and Assistant County Attorney Long exchanged letters about Salcido's placement at CMHI, but did not resolve the situation. On October 16, 1998, Marian Health Center sent a letter to the Woodbury County Board of Supervisors requesting action on Dr. Muller's August 19, 1998, "appeal." On October 20, 1998, Assistant County Attorney Long sent a ***905** letter to Tri-State recommending that an intermediary appeal step be skipped in Salcido's case and that the appeal instead go directly to the County Board of Supervisors. The County notified Marian Health Center that an appeal hearing before the Board of Supervisors regarding Salcido was scheduled for November 17, 1998. The appeal hearing was subsequently rescheduled, by agreement of the parties, to December 8, 1998.

Apparently as part of its appeal process, the Board of Supervisors received a letter, dated December 8, 1998, from Dr. Dale Wassmuth, a physician reviewer with Tri-State, offering an alternative diagnosis of Salcido's condition as "dementia due to other medical conditions" and "head injury with brain injury," and concluding that Salcido had "never met full criteria for a depressive episode while free of the effects of brain injury." Plaintiff's Documents in Support of Motion for Summary Judgment at 37. On December 18, 1998, by letter from Assistant County Attorney Long, the Board of Supervisors notified Dr. Muller of its determination on appeal. Ms. Long informed Dr. Muller that the Board had concluded that Salcido is ineligible for funding under the County's Mental Health Services Management Plan for the following reasons: (1) Salcido's primary

diagnosis is dementia, which is excluded from the definition of mental illness in the County's Management Plan, and the County's Management Plan had been approved by the Iowa Department of Human Services; (2) the Board "conceived of the County's Management Plan as the provision of services of last resort," while Salcido, as a recipient of Title XIX funds, had not exhausted his appeal rights defined in the contract between the Iowa Department of Human Services and Merit Behavioral Care Corporation; and (3) the County's Management Plan then in place, and made effective retroactively to July 1, 1998, "does not provide long-term residential care services for any member of the MI/CMI [Mentally Ill/Chronically Mentally Ill] population." Plaintiff's Documents in Support of Motion for Summary Judgment at 38-39. The County contends that Salcido received full and impartial consideration by the Woodbury County Board of Supervisors of his challenge to the eligibility decision in his case.
Following denial of his placement appeal, Salcido remained at Marian Health Center even though Dr. Muller continued to be of the opinion that CMHI was the only appropriate placement for him. The acute care stabilization unit at Marian Health Center, in which Salcido was detained, is a locked unit, and for that reason Salcido's doctor considered it to be overly restrictive: Salcido did not have the opportunity for appropriate activities or socialization and was at an increased risk of infection. Indeed, Salcido developed pneumonia on February 14, 1999, and was transferred to a medical unit at Marian Health Center. He returned to the behavioral floor on February 25, 1999. Because of his deteriorated health, his treatment staff believed he would not be dangerous at a nursing home. Salcido was therefore discharged to a nursing home on March 3, 1999, but had to be returned to Marian Health Center on March 12, 1999, because he had become combative and aggressive. Salcido was eventually admitted to CMHI at state expense under the terms of a stipulated preliminary injunction dated May 17, 1999. He remains there at this time.

2. Mental health funding and management

The cost of Salcido's care at Marian health Center was $950 per day, which was paid by Title XIX funding, while the cost at CMHI for fiscal year 1999 was $236.87 per day. Of the cost at CMHI, $184 per day would have been assessed to the County.
Legislation passed in 1994 requires each county in Iowa to have a county mental health services management plan, which is submitted to the Iowa Department of Human Services (IDHS) for approval. Each county's plan for the following ***906** fiscal year must be submitted by April 1 (for example, by April 1, 1997, for fiscal year 1998, which starts on July 1, 1997). IOWA CODE § 331.439(1). However, Woodbury County's proposed fiscal year 1998 plan was not approved prior to the beginning of the 1998 fiscal year. After requests for clarification from the IDHS, discussions and negotiations related to the language of the County's plan, and the County's submission of changes, the plan was eventually approved on March 17, 1998. Similarly, the County's proposed fiscal year 1999 plan was not approved prior to the beginning of the 1999 fiscal year. Instead, the fiscal year 1999 plan was approved on December 7, 1998. Thus, the State Defendants contend that, at the time commitment proceedings for Salcido were commenced on July 8, 1998, Woodbury County was still working under its fiscal year 1998 County Management Plan. However, the County's position, as stated in the letter from Assistant County Attorney Long informing Salcido of the decision of the Board of Supervisors, is that the 1999 plan was "retroactive" to July 1, 1998, following approval of the plan on December 7, 1998. The County's 1999 Mental Health Services Management Plan excludes persons suffering from dementia from eligibility for services.
The County indicated in answer to discovery requests that its total budget for the fiscal year 1999-2000 is $37,598,064, and that, of that amount, $7,879,947 is for mental health. The County contracts with Tri-State for a set amount to be spent on mental illness funding. As to the State's financing of mental health services, in 1998, pursuant to a contract between the IDHS and Merit Behavioral Corporation, Merit administered the Iowa Medicaid Managed Mental Health Care Plan, which is funded by Title XIX funds. On October 28, 1998, the IDHS and Merit entered into a new contract entitled the Iowa Plan for Behavioral Health. Under this contract, Merit Behavioral Care Corporation of Iowa administered the medical assistance program for the IDHS. The IDHS and the County both receive federal funding for programs for individuals with mental disabilities.

B. Procedural Background

1. Preliminary matters

In an attempt to compel the defendants to place him in the institution to which he had been committed, Salcido filed this lawsuit on December 18, 1998, against Woodbury County, referred to herein as "the County," and against Governor Thomas J. Vilsack and Jessie Rasmussen, the Director of the IDHS, referred to herein as the "State Defendants." In his Complaint, Salcido asserted several claims. First, in claims brought pursuant to 42 U.S.C. § 1983, Salcido asserted that the defendants have violated his right to equal protection by treating him differently than similarly situated individuals; violated his right to substantive due process by denying him adequate treatment; and violated his right to procedural due process by denying him appropriate placement under state and federal law and thereby depriving him of liberty. In a claim pursuant to Title II of the Americans with Disabilities Act (ADA), specifically, 42 U.S.C. § 12133, Salcido asserted that he is a disabled person qualified for care and treatment, but that the defendants have discriminated against him by excluding him from an appropriate placement on the basis of his disability. Finally, in a claim pursuant to the Rehabilitation Act (RA), 29 U.S.C. § 794(a), Salcido asserts that he is a disabled person qualified for care and treatment, but that he has been denied access to the

benefits and services provided by the defendants' federally-funded programs for the mentally disabled. Salcido sought declaratory and injunctive relief, damages, costs, and such other relief as the court deemed appropriate.

Salcido also filed a motion for preliminary injunction on April 19, 1999. The parties agreed to the entry of a stipulated preliminary injunction on May 17, 1999, under the terms of which Salcido was admitted to the CMHI at state expense. However, under the terms of the preliminary ***907** injunction, no party waived any defense or claim to payment for Salcido's care, and the issue of who is responsible for payment of past and future expenses for Salcido's care was preserved for further consideration in these proceedings.

The County answered Salcido's Complaint on January 29, 1999. Instead of answering, the State Defendants moved to dismiss Salcido's Complaint, on various grounds, on February 11, 1999. On September 16, 1999, the court granted the State Defendants' February 11, 1999, motion to dismiss only as to Salcido's equal protection claim, but denied the motion to dismiss as to the rest of Salcido's claims. *See* Salcido v. Woodbury County, Iowa, 66 F.Supp.2d 1035, 1053 (N.D.Iowa 1999). Thereafter, on January 31, 2000, the State Defendants answered Salcido's Complaint and asserted a cross-claim against Woodbury County. In their cross-claim, the State Defendants assert that the County, as Salcido's county of legal settlement, is mandated by IOWA CODE CH. 229 to pay for services for Salcido at an appropriate facility following commitment proceedings, but the County has failed to do so. Therefore, the State Defendants pray for declaratory judgment that the County was responsible for designating an appropriate facility to which the hospital referee could commit Salcido on July 15, 1998, when Salcido did not require care at Marian Health Center; declaratory judgment that the County is responsible for the costs of Salcido's care at all times from the time that the referee determined that he was seriously mentally impaired and required commitment to a facility appropriate to his needs; and a determination that the County is responsible for all costs expended by CMHI for the care and treatment of Salcido since his admission to the facility and the County must pay such costs to defendant Rasmussen for the benefit of CMHI, as directed by IOWA CODE CH. 230. The County answered the State Defendants' cross-claim on March 24, 2000.

2. The present motions for summary judgment

A second, and more comprehensive round of dispositive motions is now before the court. On July 19, 2000, Salcido moved for summary judgment on some of his claims, in part or in their entirety. First, Salcido seeks summary judgment that the County and State Defendants violated his rights to *procedural* due process by failing to provide adequate notice and opportunity for hearing and by failing to provide an impartial decision-maker regarding his placement at CMHI. He seeks declaratory and injunctive relief on these claims pursuant to summary judgment. However, Salcido notes that he makes no claim for damages against the State Defendants on these claims, and he contends that there are genuine issues of material fact regarding damages to which he is entitled from the County on these claims. Salcido also seeks summary judgment on his ADA and RA claims, to the extent of declaratory and injunctive relief against the County and the State Defendants. Salcido again acknowledges that he cannot obtain damages relief against the State Defendants on these claims, although he asserts that there are genuine issues of material fact regarding damages he is due from the County on these claims. The County resisted Salcido's motion on August 11, 2000, and the State Defendants resisted it on August 14, 2000. Also on August 11, 2000, the County filed its own motion for summary judgment on Salcido's claims and, at least by implication, on the State Defendants' cross-claim.[FN3] The State Defendants and Salcido resisted the County's motion for summary judgment, on August 17, 2000, and August 25, 2000, respectively. On August 14, 2000, the State Defendants filed two motions for summary judgment, one against plaintiff Salcido on his claims and the other against the County on the State Defendants' cross-claim. The County resisted the ***908** State Defendants' motion for summary judgment on the cross-claim on August 18, 2000. Salcido resisted the State Defendants' motion for summary judgment on his claims on August 25, 2000. However, in his resistance, Salcido "abandoned" his *substantive* due process claim against the State Defendants.

FN3. The County's motion for summary judgment does not identify the party or parties against whom it is brought.

Thus, while Salcido still asserts equal protection, substantive and procedural due process, ADA, and RA claims against the County, he only asserts procedural due process, ADA, and RA claims against the State Defendants. The court dismissed Salcido's equal protection claim against the State Defendants and Salcido has now abandoned his substantive due process claims against these defendants. However, neither Salcido nor the County has put at issue either Salcido's equal protection or substantive due process claims against the County in the summary judgment motions presently before the court. Thus, whatever the outcome of the various motions for summary judgment, these claims against the County will remain at issue.

The court heard oral arguments on the motions on October 13, 2000. At these oral arguments, plaintiff Maximo Salcido was represented by Frank Tenuta of Legal Services Corporation of Iowa, in Sioux City, Iowa. Defendant Woodbury County was represented by Doug Phillips of Klass, Stoik, Mugan, Villone Phillips, Orzechowski, Clausen & Lapierre, L.L.P., in Sioux City, Iowa. The "State Defendants," Governor Thomas L. Vilsack and Director Jessie Rasmussen, were represented by Gordon E. Allen, Deputy Iowa Attorney General, and Mary W. Vavroch, Assistant Iowa Attorney General, in Des Moines, Iowa. This matter is now fully submitted.

II. LEGAL ANALYSIS

A. Standards For Summary Judgment

This court has considered in some detail the standards applicable to motions for summary judgment pursuant to FED. R. CIV. P. 56 in a number of prior decisions. *See, e.g., Swanson v. Van Otterloo*, 993 F.Supp. 1224, 1230-31 (N.D.Iowa 1998); *Dirks v. J.C. Robinson Seed Co.*, 980 F.Supp. 1303, 1305-07 (N.D.Iowa 1997); *Laird v. Stilwill*, 969 F.Supp. 1167, 1172-74 (N.D.Iowa 1997); *Rural Water Sys. # 1 v. City of Sioux Ctr.*, 967 F.Supp. 1483, 1499-1501 (N.D.Iowa 1997) *aff'd in pertinent part*,202 F.3d 1035 (8th Cir.2000); *Tralon Corp. v. Cedarapids, Inc.*, 966 F.Supp. 812, 817-18 (N.D.Iowa 1997), *aff'd*,205 F.3d 1347, 2000 WL 84400 (8th Cir.2000) (Table op.); *Security State Bank v. Firstar Bank Milwaukee, N.A.*, 965 F.Supp. 1237, 1239-40 (N.D.Iowa 1997); *Lockhart v. Cedar Rapids Community Sch. Dist.*, 963 F.Supp. 805 (N.D.Iowa 1997). Thus, the court will not consider those standards in detail here. Suffice it to say that Rule 56 itself provides, in pertinent part, as follows:

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim ··· is asserted ··· may, at any time, move for summary judgment in the party's favor as to all or any part thereof.

(c) Motions and Proceedings Thereon···· *The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.*

FED. R. CIV. P. 56(b) & (c) (emphasis added).

Applying these standards, the trial judge's function at the summary judgment stage of the proceedings is not to weigh ***909*** the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir.1996); *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir.1990). Therefore, a court considering a motion for summary judgment must view all the facts in the light most favorable to the nonmoving party, and give the non-moving party the benefit of all reasonable inferences that can be drawn from the facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962)). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel*, 953 F.2d at 394 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). As to whether a factual dispute is "material," the Supreme Court has explained, "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Beyerbach*, 49 F.3d at 1326; *Hartnagel*, 953 F.2d at 394. Furthermore, "[w]here the unresolved issues are primarily legal rather than factual"-as the parties assert is the case here-"summary judgment is particularly appropriate." *Arnold v. City of Columbia, Mo.*, 197 F.3d 1217, 1220 (8th Cir.1999) (citing *Crain v. Board of Police Commissioners*, 920 F.2d 1402, 1405-06 (8th Cir.1990)); *Haberer v. Woodbury County*, 188 F.3d 957, 961 (8th Cir.1999) (also citing *Crain*); *Cearley v. General Am. Transp. Corp.*, 186 F.3d 887, 889 (8th Cir.1999) (same). With these standards in mind, the court turns to consideration of the parties' various motions for summary judgment. Because the issues raised in the various motions for summary judgment are inextricably intertwined, the court will take a "thematic" approach to disposition of the motions, that is, the court will consider each claim or cross-claim at issue in turn, rather than attempting to address the individual motions in turn.

B. Salcido's Procedural Due Process Claim

The first claim at issue in all of the parties' motions for summary judgment is Salcido's claim of a violation of procedural due process. This claim alleges that the defendants violated Salcido's right to procedural due process by denying him appropriate placement under state and federal law and thereby depriving him of a "liberty" interest. More specifically, Salcido contends that he is entitled to summary judgment on this claim, because, as a matter of law, the County and State Defendants violated his right to procedural due process by failing to provide adequate notice and opportunity for hearing and by failing to provide an impartial decision-maker to protect his right to an appropriate placement following his involuntary civil commitment. The court must first examine the requirements of Salcido's procedural due process claim, then turn to the question of whether Salcido can satisfy these requirements as a matter of law, which would entitle him to summary judgment, or can generate genuine issues of material fact on this claim in order to defeat summary judgment in favor of the defendants.

1. The requirements of a procedural due process claim

"The possession of a protected life, liberty, or property interest is a condition precedent to invoking the government's obligation to provide due process of law." *Stauch v. City of Columbia Heights*, 212 F.3d 425, 429 (8th Cir.2000); *Hopkins v. Saunders*, 199 F.3d 968, 975 (8th Cir.1999) ("To establish a procedural due process violation, a plaintiff must demonstrate that he has a protected property or liberty interest at stake and that he was deprived of that interest without due process of law."); *Dunham v. Wadley*, 195 F.3d 1007, 1009 (8th Cir.1999) ("The analysis of a ***910*** procedural due

process claim must begin with examination of the interest allegedly violated."). Thus, Salcido must first show that he possesses the sort of protectable interest that triggers federal due process guarantees. *Id.;* *Hopkins,* 199 F.3d at 975; *Dunham,* 195 F.3d at 1009; *Spitzmiller v. Hawkins,* 183 F.3d 912, 915 (8th Cir.1999) (quoting *Gordon, infra*); *Gordon,* 168 F.3d at 1114 ("To set forth a procedural due process violation, a plaintiff, first, must establish that his protected liberty or property interest is at stake.").

Second, where a plaintiff has a protected liberty or property interest, "[t]o establish a procedural due process violation, a plaintiff must demonstrate ··· that he was deprived of that interest without due process of law." *Hopkins,* 199 F.3d at 975; *Gordon,* 168 F.3d at 1114 ("Second, the plaintiff [asserting a procedural due process claim] must prove that the defendant deprived him of such [a liberty or property] interest without due process of law."). "A procedural due process claim focuses not on the merits of a deprivation, but on whether the State circumscribed the deprivation with constitutionally adequate procedures." *Parrish v. Mallinger,* 133 F.3d 612, 615 (8th Cir.1998). Therefore, the court must determine what process is due in the circumstances of the case. *Hopkins,* 199 F.3d at 975; *accord Stauch,* 212 F.3d at 431; *Morgan v. Rabun,* 128 F.3d 694, 699 (8th Cir.1997); *Bliek v. Palmer,* 102 F.3d 1472, 1475 (8th Cir.1997).

2. Does Salcido have a protectable interest?

a. Sources of liberty interests

[1] [2] [3] As to the first requirement of a procedural due process claim-a protectable interest, *see, e.g., Stauch,* 212 F.3d at 429; *Hopkins,* 199 F.3d at 975; *Dunham,* 195 F.3d at 1009; *Spitzmiller,* 183 F.3d at 915; *Gordon,* 168 F.3d at 1114-the Supreme Court has explained that the source of protectable liberty interests is, at least in the first instance, the Federal Constitution: In *[Board of Regents of State Colleges v.] Roth,* [408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)], this Court repeated the pronouncement in *Meyer v. Nebraska,* 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042, (1923) that the liberty guaranteed by the Fourteenth Amendment " 'denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized ··· as essential to the orderly pursuit of happiness by free men.' " *Roth, supra,* at 572, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (quoting *Meyer, supra,* at 399, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042).

Conn v. Gabbert, 526 U.S. 286, 291, 119 S.Ct. 1292, 143 L.Ed.2d 399 (1999). However, as the Eighth Circuit Court of Appeals has also explained,

The Federal Due Process Clause defines only the minimum protections required. State law, however, may recognize *more extensive* liberty interests than the Federal Constitution. *See Mills [v. Rogers],* 457 U.S. [291,] 300, 102 S.Ct. [2442,] 2448, 73 L.Ed.2d 16 [(1982)]. These state-created liberty interests are entitled to protection under the Fourteenth Amendment's Due Process Clause. *See id.*

See Morgan v. Rabun, 128 F.3d 694, 697 (8th Cir.1997) (emphasis added). "[A] liberty interest created by state law is by definition circumscribed by the law creating it." *Dobrovolny v. Moore,* 126 F.3d 1111, 1113 (8th Cir.1997) (quoting *Montero v. Meyer,* 13 F.3d 1444, 1450 (10th Cir.), *cert. denied,* 513 U.S. 888, 115 S.Ct. 231, 130 L.Ed.2d 156 (1994)).

b. The parties' arguments

Salcido argues that he has liberty interests or substantive rights on which his procedural due process claim can be based that are drawn from both federal and state ***911** law. He contends, first, that, as an involuntarily committed person, he has a liberty interest in minimally adequate treatment pursuant to *Youngberg v. Romeo,* 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982). He also contends that, under state law, he has a right to "necessary psychiatric services and additional care and treatment as indicated by [his] condition," *se e*IOWA CODE § 229.23, and a right to "complete psychiatric evaluation and appropriate treatment." *See* IOWA CODE § 229.13; *see also* IOWA CODE § 229.14(2) (the chief medical officer's report to the hospital referee on the psychiatric evaluation shall state, as one alternative, "[t]hat the respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital, and is considered likely to benefit from treatment. If the report so states, the court shall enter an order which may require the respondent's continued hospitalization *for appropriate treatment.*") (emphasis added).

Although the County does not challenge Salcido's procedural due process claim on the ground that he has no protectable interest on which to found such a claim,[FN4] the State Defendants do. The State Defendants assert that "Salcido claims to have a liberty interest in notice and hearing on placement," but they argue that one cannot have a liberty interest in mere procedures. *See* Defendants Rasmussen and Vilsack's Memorandum Resisting Salcido's Motion For Summary Judgment And In Support Of Rasmussen and Vilsack's Motions For Summary Judgment Against Salcido And Woodbury County (State Defendants' Brief) at 8. The State Defendants also contend that, like prisoners, Salcido has no liberty interest in a placement at a particular institution. Furthermore, the State Defendants argue that, even if Salcido has a right to "appropriate care and treatment," that right is a different "liberty interest" from an interest in placement in a particular facility. The State Defendants note that the pertinent Iowa statutes explicitly assign the responsibility of placement and the determination of the level of care needed by the committed individual to the chief medical officer, subject to approval by the court. Hence, the State Defendants contend that Salcido's procedural due process claim fails for lack of any liberty interest or

substantive right to which procedural due process can attach.
FN4. The County instead asserts that Salcido received all the process to which he was due.

The court agrees with the State Defendants' general proposition that one cannot have a liberty interest in mere procedures, at least to the extent that the Supreme Court has held that state laws setting forth procedural restrictions take on constitutional significance only if those laws contain "explicitly mandatory language in connection with requiring specific substantive predicates." *Hewitt v. Helms,* 459 U.S. 460, 472, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983). However, the court does not find that Salcido has ever argued that he had a liberty interest in notice and hearing on placement, as the State Defendants contend. Rather, Salcido has argued that he has a liberty interest in appropriate treatment and placement that entitled him to the procedural safeguards, which he did not receive, of notice and a hearing on placement. *See* Complaint, Claims for Relief, Section 1983 Claims at ¶ 29 ("Defendants have deprived Plaintiff of his rights to appropriate placement under state law and to liberty without due process of law."); Plaintiff's Brief In Support Of Motion For Summary Judgment at 14-16 (identifying substantive rights upon which the procedural due process claim is based as rights to appropriate treatment in an appropriate placement). The court also does not understand Salcido to be asserting a liberty interest in placement *at CMHI,* as the State Defendants contend. Rather, as indicated just above, Salcido has formulated his procedural due process claim in his Complaint and in his briefs in support of and resistance to motions for summary judgment as founded on a substantive right or liberty interest in *an appropriate* placement-albeit one he contends, ***912** on the authority of his treating physician, can only be had in Iowa at the CMHI.[FN5] This conclusion also answers, at least for purposes of this case, the State Defendants' contention that involuntarily committed persons, like prisoners, do not have a liberty interest in a particular placement. *See Freitas v. Ault,* 109 F.3d 1335, 1337-38 (8th Cir.1997). That contention simply does not relate to any claim for a liberty interest that the court finds is at issue here. Rather, the question before the court is whether Salcido has a liberty interest in an *appropriate* placement, as he contends.
FN5. While Salcido concedes that there may be genuine issues of material fact as to what placement is *appropriate,* and hence there is a genuine issue of material fact on his *substantive* due process claim for substantive deprivation of his liberty interest in an *appropriate placement,* that concession leaves intact the basis for Salcido's procedural due process claim, a protectable liberty interest in an appropriate-although not specific-placement.

c. Liberty interests of involuntarily committed persons

"It is undisputed that 'civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.' " *United States v. McAllister,* 225 F.3d 982, 989 (8th Cir.2000) (quoting *Addington v. Texas,* 441 U.S. 418, 425, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)); *accord Vitek v. Jones,* 445 U.S. 480, 491-92, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980) (an involuntary civil commitment is a " 'massive curtailment of liberty,' *Humphrey v. Cady,* 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972), and in consequence 'requires due process protection.' *Addington v. Texas,* 441 U.S. 418, 425, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)."); *Collins v. Bellinghausen,* 153 F.3d 591, 596 (8th Cir.1998) ("[L]iberty from bodily restraint is protected by the Due Process Clause of the Fourteenth Amendment [and][t]his liberty interest is implicated in involuntary commitment proceedings."). Furthermore, in *Youngberg v. Romeo,* 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982), the Supreme Court recognized that the liberty interests of involuntarily committed persons extend beyond the initial deprivation of liberty to retention of liberty interests in safety, freedom from bodily restraint, and *minimally adequate treatment or training.* The court will explore the *Youngberg* decision in more detail.
i. Youngberg v. Romeo. In *Youngberg,* the mentally retarded plaintiff, Romeo, had been involuntarily committed to a Pennsylvania state institution. *See Youngberg,* 457 U.S. at 309-10, 102 S.Ct. 2452. He filed suit seeking damages for injuries he suffered in the institution and for the denial of appropriate treatment, in violation of his Eighth and Fourteenth Amendment rights. *Id.* at 310-11, 102 S.Ct. 2452. A jury returned a verdict for the defendants, but the Third Circuit Court of Appeals, sitting *en banc,* reversed and remanded for a new trial. *Id.* at 312, 102 S.Ct. 2452. The *en banc* court concluded that the Fourteenth Amendment and the liberty interests protected by that Amendment provided the proper constitutional basis for the rights of involuntarily committed persons, concluding, in consequence, that the trial court had erred by instructing the jury in terms of Eighth Amendment standards. *Id.* However, the *en banc* court did not agree on the relevant standard to be used in determining whether the plaintiff's rights had been violated. *Id.* at 313, 102 S.Ct. 2452.
On a writ of *certiorari,* the Supreme Court concluded, first, that "[t]he mere fact that Romeo has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment." *Id.* at 315, 102 S.Ct. 2452. Rather, the Court concluded that, "[i]n the circumstances presented by this case, and on the basis of the record developed to date, we ··· conclude that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint." *Id.* at 319 & n. 24, 102 S.Ct. 2452 (noting that, in the concurring opinion in the appellate court ***913** with which the Supreme Court agreed, the concurring judge had "used the term 'treatment' as synonymous with training or habilitation"). However, the court concluded that such interests were not "absolute"; rather, "whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests." *Id.* at 321, 102 S.Ct. 2452; *see also*

Heidemann v. Rother, 84 F.3d 1021, 1028-29 (8th Cir.1996) (discussing *Youngberg* in the context of restraint of a severely mentally retarded child by school system employees).

ii. Youngberg's Eighth Circuit progeny. In *Hanson v. Clarke County, Iowa,* 867 F.2d 1115 (8th Cir.1989), the Eighth Circuit Court of Appeals discussed *Youngberg* in the context of *voluntary* commitment of an individual. *Hanson,* 867 F.2d at 1119-21. The plaintiff contended that the defendant county board of supervisors "has a constitutional duty to fund the exercise of her alleged constitutional right to placement in the 'least restrictive environment consistent with qualified professional judgment.' " *Id.* at 1120.

The Eighth Circuit Court of Appeals rejected the plaintiff's contention, in pertinent part, as follows:

While it is clear that the Iowa statutory scheme creates a substantive right to appropriate care and treatment, neither the state law nor the liberty interests explicated in *Youngberg* create a substantive due process right to optimal care and treatment.

The cases relied upon by Hanson are inapposite. *Youngberg* recognizes that the involuntarily committed retain liberty interests in safety, freedom from bodily restraint and suitable training. 457 U.S. at 324, 102 S.Ct. at 2462 (emphasis added). Even if the *Youngberg* holding could be properly extended to a case such as this where the plaintiff has been voluntarily institutionalized, it would be of no help to Hanson. The rights recognized by the *Youngberg* Court are not absolute. The *Youngberg* opinion recognizes that these rights are qualified and must be balanced against important state interests. *Id.* at 321, 102 S.Ct. at 2461. More importantly, *Youngberg* recognizes a right to ["] *minimally adequate* training," not optimal training. *Id.* at 322, 102 S.Ct. at 2461 (emphasis added). There is no question that the Oconomowoc placement is the optimal placement for Hanson. All of the parties and the experts agree on that point. She has, however, no constitutional right to such a placement. She has only a right under the Iowa statutory scheme to an adequate placement. Further, the other cases relied upon by Hanson do not hold that she is entitled to choose the least restrictive environment in a private institution and then compel the state to fund that placement. Rather, these cases hold that once an individual is institutionalized in a state institution, he or she is entitled to the least amount of bodily restraint possible under the circumstances. *See, e.g., [Retarded Citizens v.] Olson,* [561 F.Supp. 473,] 485 [(D.N.D.1982)].

Hanson, 867 F.2d at 1120. Thus, *Hanson,* like *Youngberg,* stands for the proposition that an involuntarily committed person has substantive rights or a liberty interest in "an adequate placement," but not in a *particular* placement.

iii. Iowa authorities. As Salcido points out, the Iowa Supreme Court has recognized that the substantive right or liberty interest defined by provisions of the Iowa Code applicable here appear to be consistent with the liberty interest defined in *Youngberg.* In *Jasper County v. McCall,* 420 N.W.2d 801 (Iowa 1988), the Iowa Supreme Court considered an *involuntary* commitment case in which the person facing commitment suffered from a serious mental impairment, as defined in IOWA CODE § 229.1(2). *McCall,* 420 N.W.2d at 801. However, the respondent's impairment, according to the findings of the referee, required "highly specialized***914** and expensive treatment which is available only outside Iowa." *Id.*

In *McCall,* the Iowa Supreme Court read IOWA CODE §§ 229.13 and 229.21, which vest the referee with the power to place impaired persons in a hospital or other suitable facility, to vest the referee with the authority to place persons outside Iowa, if necessary, even though the statute was silent on that issue. *Id.* at 803.

The county's reading of the statutes, limiting placement to an area where adequate treatment has been found unavailable, would be of highly doubtful constitutionality. In *Youngberg v. Romeo,* 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982), the court defined the fourteenth amendment substantive rights of involuntarily committed mentally retarded persons. The court concluded that the individual's liberty interests require that the state provide "minimally adequate or reasonable" treatment. *Id.* at 319, 102 S.Ct. at 2460, 73 L.Ed.2d at 39. Several courts have also held that state officials must provide the least stringent practicable alternatives to confinement of noncriminals. *See Stamus v. Leonhardt,* 414 F.Supp. 439 (S.D.Iowa 1976); *see also Eubanks v. Clarke,* 434 F.Supp. 1022 (E.D.Pa.1977); *Davis v. Watkins,* 384 F.Supp. 1196 (N.D.Ohio 1974); *Lessard v. Schmidt,* 349 F.Supp. 1078 (E.D.Wis.1972). Iowa Code section 229.13 states that a person found to be mentally impaired shall be placed "in a hospital or other suitable facility." Section 229.14 requires the facility's chief medical officer to recommend "an alternative placement" upon finding that the mentally impaired person is unlikely to benefit from further treatment in a hospital. Nowhere in chapter 229 is either "other suitable facility" or "alternative placement" defined.

Section 229.23 seems to expressly recognize the minimum requirements defined in Youngberg v. Romeo. The statute states that a person shall have the right to "care and treatment as indicated by sound medical practice."

We hold that the placement authority of a hospitalization referee under sections 229.13 and 229.21 is not necessarily confined to facilities in Iowa. Placement can be ordered elsewhere when adequate treatment cannot be found within Iowa's boundaries. We think it follows that the placement can be ordered at public expense under the same terms and conditions as would be appropriate for placements in Iowa.

A caveat is in order. The scope of this holding is limited in two important ways. It applies only to situations where adequate minimum treatment is not available in Iowa. Secondly, out of concern for the beleaguered taxpayers, out-of-state placements should be ordered only where realistically needed and should not be ordered for the routine care of persons, even those with tragically difficult problems who might be happier or more comfortable elsewhere.

McCall, 420 N.W.2d at 803 (emphasis added). Thus,

McCall, like *Youngberg* and *Hanson,* stands for the proposition that an involuntarily committed person has a substantive right or liberty interest in an appropriate placement, adding that the appropriate placement is the one indicated by "sound medical advice," even if that placement is not available in the State of Iowa. However, *McCall* cannot be read to recognize a substantive right or liberty interest in placement in a particular institution, although placement at a particular institution had been ordered by the referee in that case. *See id.* at 803 (the referee ordered placement at the Deaf Treatment Center at the Mendota Mental Health Institute in Wisconsin). Rather, the Iowa Supreme Court upheld the placement at issue in *McCall* on the ground that "adequate treatment cannot be found within Iowa's boundaries." *Id.*

Although IOWA CODE § 229.23(1), the provision of the Iowa Code that the Iowa Supreme Court found in *McCall* "seems to ***915** expressly recognize the minimum requirements defined in *Youngberg v. Romeo,*" *see McCall,* 420 N.W.2d at 803, was subsequently amended in 1989, the court does not believe that the amendment changes the impact of § 229.23(1), although the amendment does define the "minimum requirements" somewhat differently. At the time of the *McCall* decision, the pertinent subsection read,

Every person who is hospitalized or detained under this chapter shall have the right to:

1. Prompt evaluation, emergency psychiatric services, and care and treatment as indicated by sound medical practice.

IOWA CODE § 229.23(1) (1988). The provision now reads,

Every person who is hospitalized or detained under this chapter shall have the right to:

1. Prompt evaluation, *necessary* psychiatric services, *and additional care and treatment as indicated by the patient's condition.* A comprehensive, individualized treatment plan shall be timely developed following issuance of the court order requiring involuntary hospitalization. *The plan shall be consistent with current standards appropriate to the facility to which the person has been committed and with currently accepted standards for psychiatric treatment of the patient's condition,* including chemotherapy, psychotherapy, counseling and other modalities as may be appropriate.

IOWA CODE § 229.23(1) (1999). Thus, the provision has, *inter alia,* been expanded to require more comprehensive care, not simply *emergency* care, and the phrase "care and treatment as indicated by sound medical practice" has been replaced, first, by the phrase "additional care and treatment as indicated by the patient's condition," with the additional requirement later that "[t]he [treatment] plan shall be consistent ··· with currently accepted standards for psychiatric treatment of the patient's condition."

These changes, the court concludes, change the wording, but not the essential requirement, of the statutory provision, leaving it consonant with the *Youngberg* requirement of "minimally adequate or reasonable" treatment. *See McCall,* 420 N.W.2d at 803 (quoting *Youngberg,* 457 U.S. at 319, 102 S.Ct. 2452). However, the substantive right defined by the provision as a whole now appears to be *broader* than the liberty interest defined in *Youngberg.* Such broadening of the substantive right, as defined by the Iowa statute, does not eliminate the statute as the formulation of a substantive right upon which Salcido's procedural due process claim can be based. State law may recognize *more extensive* liberty interests than the Federal Constitution. *See Morgan,* 128 F.3d at 697 ("State law ··· may recognize *more extensive* liberty interests than the Federal Constitution [and] [t]hese state-created liberty interests are entitled to protection under the Fourteenth Amendment's Due Process Clause.") (emphasis added). Similarly, although IOWA CODE § 229.13 has also been amended since the decision in *McCall* was handed down, the amendment does not change the essential requirement that a committed person be ordered to a hospital or facility "for a complete psychiatric evaluation and appropriate treatment." IOWA CODE § 229.13 (as amended in 1996), *and compare* IOWA CODE § 229.13 (1988) (a person found to be mentally impaired shall be placed "in a hospital or other suitable facility").

d. Salcido's liberty interest

The court concludes that *Youngberg, Hanson, McCall,* and pertinent provisions of the Iowa Code establish that Salcido has a substantive right or liberty interest in an *appropriate* placement, as the result of his involuntary commitment for a serious mental impairment. *Youngberg* establishes that a person in Salcido's circumstances has a liberty interest in "minimally adequate or reasonable training to ensure safety and freedom from undue restraint." *Youngberg,* 457 U.S. at 319, 102 S.Ct. 2452. ***916** *Hanson* recognizes that same liberty interest, but clarifies that neither *Youngberg* nor the Iowa statutory scheme for *voluntarily* committed persons requires the provision of "optimal" treatment. *Hanson,* 867 F.2d at 1120. *McCall* clarifies that the Iowa statutory scheme for *involuntarily* committed persons is consistent with *Youngberg,* in that it establishes the substantive rights of such persons to a placement that can provide appropriate treatment. The present form of the statutes upon which the Iowa Supreme Court relied in *McCall,* this court concludes, still establish a substantive right to "care and treatment as indicated by the patient's condition" and a "[treatment] plan [that is] consistent ··· with currently accepted standards for psychiatric treatment of the patient's condition." IOWA CODE § 229.23(1) (1989); IOWA CODE § 229.13 (as amended in 1996) (requiring "complete psychiatric evaluation and appropriate treatment"). Therefore, as a matter of law, Salcido has satisfied the first requirement of his procedural due process claim, identification of a protectable liberty interest in a placement capable of providing "appropriate" treatment. *See, e.g., Stauch,* 212 F.3d at 429; *Hopkins,* 199 F.3d at 975; *Dunham,* 195 F.3d at 1009; *Spitzmiller,* 183 F.3d at 915; *Gordon,* 168 F.3d at 1114.

3. Did Salcido receive the process he was due?

[4] Because Salcido has established, as a matter of law, that he has a protectable liberty interest in a placement capable of providing appropriate treatment, the court turns to the question of whether Salcido received the process to which he was due in order to protect that liberty interest. *Stauch,* 212 F.3d at 431; *Hopkins,* 199 F.3d at 975; *Morgan,* 128 F.3d at 699; *Bliek,* 102 F.3d at 1475. "Due process is a flexible concept and a determination of what process is due ··· depends upon the particular circumstances involved." *Bliek,* 102 F.3d at 1475; *accord Johnson v. Outboard Marine Corp.,* 172 F.3d 531, 537 (8th Cir.1999) ("Due process is a flexible concept, and its procedural protections will vary depending on the particular deprivation involved."). As the Eighth Circuit Court of Appeals has explained,

To determine what process is due, [courts] balance three factors: first, "the private interest that will be affected by the official action"; second, "the Government's interest"; and third, "the risk of an erroneous deprivation of [the private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards."

Wallin v. Minnesota Dep't of Corrections, 153 F.3d at 681, 690 (8th Cir.1998) (quoting *Mathews v. Eldridge,* 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)); *accord Murray v. Dosal,* 150 F.3d 814, 819 (8th Cir.1998) (citing *Mathews*); *Morgan,* 128 F.3d at 699 (citing *Mathews*); *Parrish,* 133 F.3d at 615 (citing *Mathews*). The court will refer to these factors herein as the " *Mathews* factors." Similarly, in *Youngberg,* the Supreme Court held that the liberty interests of involuntarily committed persons in adequate treatment were not "absolute," such that "whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests." *Youngberg,* 457 U.S. at 321, 102 S.Ct. 2452. Thus, *Youngberg* requires a balancing of factors similar to the *Mathews* factors to determine what due process protections are necessary to protect an involuntarily committed person's liberty interest in appropriate treatment and placement.

"Although, the question of whether the procedural safeguards provided ··· are adequate to satisfy due process is a question of law for the court to determine, whether the [defendant] indeed provided the [plaintiff] with such procedure is a question of fact for the jury." *Stauch,* 212 F.3d at 431. However, in this case, the parties contend that the questions of the adequacy of procedural safeguards provided and the question of whether the defendants ***917** indeed provided Salcido with such procedures can be decided *as a matter of law* in the absence of any genuine issues of material fact.

Salcido contends that the Iowa civil commitment statutes violate the procedural due process rights of an involuntarily committed person on their face, because they require neither a hearing on placement nor determination of placement by an impartial decision-maker when the County refuses to pay for the placement ordered by the hospital referee. This contention is therefore directed at both the County and the State Defendants. Salcido also contends that the County violated his procedural due process rights as a matter of law in the circumstances of his case, *i.e.,* as the procedures were applied, because the County provided neither a hearing nor an impartial decision-maker on appropriate placement in his case. Assuming Salcido has the necessary liberty interest, the State Defendants contend that Salcido was not erroneously deprived of any such interest, because the commitment procedures under IOWA CODE CH. 229 provide all the process that is due. Similarly, the County contends that the statutory provisions concerning commitment and the available procedures for contesting denials of funding, by Merit under the State's Title XIX program, and by Tri-State under the County's program, provide all the process that is due in the circumstances of this case.

a. Salcido's interest

In support of his argument that due process requires notice, a hearing, and an impartial decision-maker on placement, Salcido argues that the placement determination is necessarily intertwined with the civil commitment determination itself. Therefore, as to the first *Mathews* factor, "the private interest that will be affected by the official action," *see Mathews,* 424 U.S. at 335, 96 S.Ct. 893; *Wallin,* 153 F.3d at 690, Salcido contends that an individual's placement will be of great significance to his private interest, as it impacts directly on his liberty interest in appropriate treatment. On the other hand, the State Defendants contend that, because the person to be committed is unable to make responsible decisions, the value of any procedures that would allow him or her more input in the placement decision is questionable.

Contrary to the State Defendants' contention, Salcido and other involuntarily committed persons undoubtedly have a very significant interest in the placement determination. It is at this point in the civil commitment process that the interest of the person being committed crosses from the initial interest in liberty implicated by being taken into custody, *see Vitek,* 445 U.S. at 491-92, 100 S.Ct. 1254; *Addington,* 441 U.S. at 425, 99 S.Ct. 1804; *McAllister,* 225 F.3d at 989; *Collins,* 153 F.3d at 596, to the interest identified in *Youngberg, Hanson, McCall,* and the Iowa civil commitment statutes as an interest in adequate treatment. *See, e.g., Youngberg,* 457 U.S. at 319, 102 S.Ct. 2452 (involuntarily committed persons have a liberty interest in minimally adequate treatment); *see also supra,* Section II.B.2.c. Moreover, if the court were troubled by nothing else in this case, it would be troubled by the suggestion of the State Defendants that, because a person is determined to be unable to make responsible decisions, that person has no interest in the determination of his or her placement, and the further suggestion that additional procedures to protect such a person's interest in an appropriate placement would be of no more than questionable value. Operating on the State Defendants' premise, *fewer* procedural protections are due persons least able to protect themselves. Such a premise turns due process on its head.

Fortunately, the Iowa legislature has recognized that persons subject to civil commitment must have counsel available and, if they cannot afford counsel, have

counsel appointed for them. *See* IOWA CODE § 229.8(1). Appointment of counsel in such cases is obviously intended to protect such persons' interests precisely *because*918* such persons are unable to protect their own interests, not because their interests evaporate. Furthermore, contrary to the State Defendants' argument, the requirement of counsel for persons subject to involuntary commitment means that any additional procedures-as well as existing procedures-would actually have some meaning in safeguarding the liberty interests of the person being committed. Therefore, persons subject to involuntary commitment have a very significant interest in adequate procedural safeguards in the determination of their placement and there would be benefits to additional safeguards, including notice and a hearing on placement before an impartial decision-maker, if present procedures are inadequate to protect their liberty interest in adequate treatment and placement.

b. The government's interest

Next, as to the second *Mathews* factor, the government's interest, *see* Mathews, 424 U.S. at 335, 96 S.Ct. 893; *Wallin,* 153 F.3d at 690, Salcido argues that neither the County nor the State Defendants have a significant interest that outweighs his own interest in notice and a hearing on placement before an impartial decision-maker, because the burden on these defendants to modify procedures to conform to due process requirements would be slight. The State Defendants, however, contend that the government's interest in the placement of persons subject to civil commitment is significant, because of the substantial costs of mental health care borne by the state and the counties, while permitting individuals to designate where services would be received would thwart any government interest in controlling mental health care costs.

Although the court acknowledges the government's interest in controlling mental health care costs, the court notes, first, that the Iowa legislature has already unequivocally demonstrated that the public has an interest in involuntary commitment and appropriate treatment of persons who pose a threat to themselves or others by enacting IOWA CODE CH. 229. Thus, the cost of care for such individuals is not a government interest that is sufficient to outweigh the individual's interest in procedural protections on an appropriate placement.

Moreover, the State Defendants once again misconstrue Salcido's contentions: He is not asserting that procedural safeguards, such as notice and a hearing before an impartial decision-maker, must allow him or other involuntarily committed persons to designate where services would be received-indeed, such a contention would appear to be foreclosed by the decision in *Hanson* that committed persons are not entitled to "optimal" treatment. *See* Hanson, 867 F.2d at 1120. Rather, Salcido is asserting that adequate procedural safeguards must permit him to be heard before an impartial decision-maker in the process that determines an appropriate placement, and certainly must permit him to be heard in the circumstances where the county responsible for paying for his care refuses to authorize or pay for an appropriate placement. The State Defendants have pointed to no government interest that touches on or outweighs Salcido's interest in notice and a hearing on placement before an impartial decision-maker to safeguard his liberty interest in an appropriate placement.

c. Risk of erroneous deprivation

The court therefore turns to the third *Mathews* factor, the risk of an erroneous deprivation in the absence of notice, hearing, and an impartial decision-maker regarding placement. *See* Mathews, 424 U.S. at 335, 96 S.Ct. 893; *Wallin,* 153 F.3d at 690. This factor is the most contentious of the three in this case and requires the most painstaking analysis.

i. Arguments of the parties. As to this factor, Salcido contends that the risk of an erroneous deprivation under the present Iowa statutory scheme is substantial, because the statutory scheme requires that an individual be committed to a facility designated through the county's single entry point process, but the Iowa Code **919* provides no procedures for resolving placement disputes if a county responsible for costs of treatment refuses, through the single entry point process, to fund or approve the placement recommended by mental health professionals and ordered by the hospital referee. FN6 Salcido points out that there are no additional procedures within the statutory scheme for notice or hearing before any decision-maker for a respondent or his counsel to contest determinations made by the single entry point process to deny services to involuntarily committed persons.

FN6. Salcido contends that the same due process deficiencies would exist if the County designated a different placement from that ordered by the referee and recommended by mental health professionals, although he acknowledges that such circumstances are not now before the court, because the County simply denied any placement at all for Salcido, rather than permitting only a different placement from the one ordered by the referee.

On the other hand, the State Defendants contend that the risk of an erroneous deprivation is minimal, because a disinterested physician is charged with evaluating the committed person's mental condition and reporting to the referee with a recommendation for an appropriate placement. The State Defendants point out that Salcido is not arguing that the physician in this case made an erroneous determination of the appropriate level of care and placement in his case; rather, the State Defendants contend that the flaw in the system that Salcido has identified was the County's refusal to follow the statutory provisions by approving and funding an appropriate placement.

The County echoes the State Defendants' arguments to the extent that the County contends that the statutory

framework for involuntary commitment provides all the procedural safeguards necessary to protect Salcido from deprivation of his liberty interest. The County points out that, in addition to the statutory provisions, grievance procedures were available to Salcido concerning denial of placement at CMHI in this case for both Merit's denial of state Title XIX funding-which the County contends Salcido did not exhaust-and the County's denial of funds through Tri-State, including, in the latter case, "appeal" to the County Board of Supervisors. The problem, the County contends, is that the hospital referee failed to make a placement that conformed to the single entry point process determination, as required by statute, and, more importantly, that Salcido was not qualified for any placement under the single entry point process and the County's plan.

To the extent the defendants argue that the procedures for initial commitment of persons provide all the process due to protect their liberty interests, that contention again goes to the "wrong" liberty interest. As the Supreme Court explained in *Youngberg*, "[t]he mere fact that [the person committed] has been committed under proper procedures does not deprive him of all substantive liberty interests under the Fourteenth Amendment." *Youngberg*, 457 U.S. at 315, 102 S.Ct. 2452. Rather, the Court concluded that, "[i]n the circumstances presented by this case, and on the basis of the record developed to date, we ··· conclude that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint." *Id.* at 319, 102 S.Ct. 2452. Thus, the proper question is whether the Iowa statutory scheme and the grievance procedures to which the County points provide adequate procedural safeguards for a committed person's *further* liberty interest in adequate treatment and placement.

ii. The statutory scheme for involuntary commitment.

Prior to the oral arguments on the motions for summary judgment, the State Defendants submitted a supplemental exhibit, State's Exhibit A, consisting of flow charts showing the process for provision of services to mentally ill persons pursuant to the Iowa Code of 1997. That exhibit was admitted into evidence, with the agreement of the parties, at the oral arguments. The portion of the ***920** exhibit indicating the process for non-emergency involuntary commitment, the process relevant here, is reproduced below.

Image 1 (5.12" X 5.97") Available for Offline Print

State's Exhibit A (partial). In this chart, "SEP" stands for "single entry point process," "CMO" stands for "chief medical officer," and "SMI" stands for "seriously mentally impaired," as those terms are used in the pertinent provisions of the Iowa Code. The "single entry point process" referred to is the method whereby counties manage services for the mentally ill, *see* IOWA CODE §§ 331.439 & 331.440,[FN7] for example, when a county is responsible for the expenses of a person committed pursuant to IOWA CODE CH. 229. *See* IOWA CODE § 229.1B ("Notwithstanding any provision of this chapter to the contrary, any person whose hospitalization expenses are ***921** payable in whole or in part by a county shall be subject to all requirements of the single entry point process."); *see also* IOWA CODE § 230.1 ("A county of legal settlement is not liable for costs and expenses associated with a person with mental illness unless the costs and expenses are for services and other support authorized for the person through the single entry point process.") (also identifying the "single entry point process" as the same one defined in IOWA CODE § 331.440).

FN7. To the extent the "single entry point process" involves a process involving a "central point coordinator," the processes are treated here as identical and will be referred to only by the former term.

Helpful as it is, the court finds that the flow chart requires some explanation and amplification. As the flow chart indicates, the process of "involuntary hospitalization" begins with an application pursuant to IOWA CODE § 229.6. The application must state the applicant's belief that "the respondent" is "seriously mentally impaired," state any other pertinent facts, and be accompanied by "a written statement of a licensed physician in support of the application," or one or more corroborating affidavits, or other corroborative information reduced to writing. IOWA CODE § 229.6. If the referee determines that the application for "involuntary hospitalization" pursuant to IOWA CODE § 229.6 is "adequate as to form, the court may set a time and place for a hearing on the application, if feasible, but the hearing shall not be held less than forty-eight hours after notice to the respondent unless the respondent waives such minimum prior notice requirement." IOWA CODE § 229.7. Section 229.7 also provides that, "[i]f the respondent is taken into custody under section 229.11, service of the application, documentation and notice upon the respondent shall be made at the time the respondent is taken into custody." *Id.* Thus, § 229.7 requires notice to the respondent of the application whether or not the respondent is taken into immediate custody.

Section 229.8, which is not mentioned in the flow chart, provides for the selection or appointment of counsel to represent the person to be committed, that is, the respondent, and notice of the application for commitment to the county attorney for review. IOWA CODE § 229.8(1) & (2). This provision also requires that, if not previously done, *i.e.*, pursuant to § 229.7, the referee "shall ··· set a time and place for a hospitalization hearing, which shall be at the earliest practicable time not less than forty-eight hours after notice to the respondent, unless the respondent waives such minimum prior notice requirement." IOWA CODE § 229.8(3)(a). Finally, this provision requires the referee to "[o]rder an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report on the examination to the court as required by section 229.10." IOWA CODE § 229.8(3)(b).

Section 229.9, which is not mentioned in the flow chart, provides for notice to the respondent's attorney of the application for commitment and orders issued by the referee pursuant to §§ 229.8 and 229.11. Section 229.10,

which also is not mentioned in the flow chart, states various requirements for the physician's examination that the referee must order pursuant to § 229.8(3)(b). Specifically, § 229.10(1) provides the timing of such examination, depending upon whether and in what manner the respondent is held in custody; entitles the respondent to a separate examination by a physician of the respondent's own choosing; permits the examining physician to consult with or request the participation of any qualified mental health professional and to take into account the findings of such a mental health professional; and permits the referee to compel a respondent not already in custody to submit to the examination. IOWA CODE § 229.10(1). Subsection (2) of § 229.10 requires the filing of a written report on the physician's examination and the sending of copies of the report to the referee and the respondent's attorney. IOWA CODE § 229.10(2). Subsection (3) permits the referee to terminate the proceedings if the examining physician's report is to the effect that the individual is not seriously mentally impaired. IOWA CODE § 229.10(3). However, if the report is to the effect that the individual is seriously ***922** mentally impaired, subsection (4) requires the referee to set a hospitalization hearing, and provides for the timing of such a hearing. IOWA CODE § 229.10(4).

The flow chart requires some clarification as to procedures in the event the respondent is ordered to be taken into immediate custody pursuant to IOWA CODE § 229.11. Immediate custody is permitted if the referee finds probable cause to believe, based on the application and accompanying documentation, "that the respondent has a serious mental impairment and is likely to injure the respondent or other persons if allowed to remain at liberty." IOWA CODE § 229.11 (unnumbered first paragraph). In such a case, the timing of the hospitalization hearing is specified by this section. *Id.* To clarify the flow chart, this section provides that, "[i]f the expenses of a respondent are payable in whole or in part by a county, for a placement in accordance with subsection 1 ["custody of a relative, friend, or suitable person"], the judge shall *give notice* of the placement to the single entry point process, and for a placement in accordance with subsection 2 ["suitable hospital"] or 3 [nearest facility licensed to care for the mentally ill], the judge shall order the placement in a hospital or facility *designated* through the single entry point process." *Id.* (emphasis added).

As the flow chart indicates, a hearing to determine serious mental impairment is the next step in the procedure. The statute defining the hearing *procedure* describes this hearing as a "hospitalization hearing." IOWA CODE § 229.12(1). The *determination* to be made at the "hospitalization hearing" and consequent orders, however, are defined by IOWA CODE § 229.13, which provides in pertinent part as follows:

If upon completion of the hearing the court finds that the contention that the respondent has a serious mental impairment is sustained by clear and convincing evidence, *the court shall order a respondent whose expenses are payable in whole or in part by a county committed to the care of a hospital or facility designated through the single entry point process*··· as expeditiously as possible for a complete psychiatric evaluation and appropriate treatment.

IOWA CODE § 229.13 (first unnumbered paragraph) (emphasis added). Further, this provision imposes certain obligations on the chief medical officer of the facility to which the respondent is initially committed following the "hospitalization hearing":

The chief medical officer of the hospital or facility shall report to the court no more than fifteen days after the individual is admitted to or placed under the care of the hospital or facility, *making a recommendation for disposition of the matter.*

IOWA CODE § 229.13 (second unnumbered paragraph). Thus, § 229.13 provides only for the initial "hospitalization" placement, and requires a report on ultimate placement of the respondent or disposition of the commitment case, but does not provide for the ultimate placement or disposition. This section provides that the chief medical officer's report "shall be sent to the respondent's attorney, who may contest the need for an extension of time if one is requested." *Id.*

The final placement of the individual is determined based on the chief medical officer's report, which is required by § 229.13, but further defined by § 229.14. "The report shall state one of the four following alternative findings": (1) "[t]hat the respondent does not, as of the date of the report, require further treatment for a serious mental impairment"; (2) "[t]hat the respondent is seriously mentally impaired and in need of full-time custody, care and treatment in a hospital, and is considered likely to benefit from treatment"; (3) "[t]hat the respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization"; or (4) that "[t]he respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment ***923** in a hospital." IOWA CODE § 229.14. For each alternative, the statute provides the appropriate order to be entered by the referee. *Id.* In the case of the fourth alternative, the one pertinent here, the statute provides as follows:

If the report so states, the chief medical officer shall recommend an alternative placement for the respondent and the court shall enter an order which may direct the respondent's transfer to the recommended placement···· If the court or the respondent's attorney considers the placement inappropriate, an alternative placement may be arranged upon consultation with the chief medical officer and approval of the court.

IOWA CODE § 229.14(4). Thus, the ultimate placement of the committed person, as contemplated by IOWA CODE CH. 229, is made by the referee on the basis of the "alternative" indicated in the chief medical officer's report and, possibly, on the basis of "consultation" between the referee, the respondent's attorney, and the chief medical officer. *Id.* Although the provisions providing for the immediate custody of the respondent, IOWA CODE § 229.11, and for initial placement after the determination of "serious mental impairment" in the "hospitalization hearing," IOWA CODE § 229.13, were amended in 1996 to require placement of persons whose

expenses will be paid by the county to a facility "designated through the single entry point process," no such amendment was made to § 229.14, the provision providing for the ultimate placement of the committed person upon the chief medical officer's recommendation. *See* IOWA CODE § 229.14. Nevertheless, ultimate placement pursuant to § 229.14 is still subject to the requirements of the "single entry point system," by virtue of § 229.1B, which provides that, "[n]otwithstanding any provision of this chapter to the contrary, any person whose hospitalization expenses are payable in whole or in part by a county shall be subject to all requirements of the single entry point process." IOWA CODE § 229.1B; *see also*IOWA CODE § 230.1 ("A county of legal settlement is not liable for costs and expenses associated with a person with mental illness unless the costs and expenses are for services and other support authorized for the person through the single entry point process.").

The court has tarried over these details of the commitment process, because they are pertinent to the determination of whether IOWA CODE CH. 229 provides due process on its face to protect an involuntarily committed person's liberty interest in an appropriate placement and to the question of whether Salcido received the process he was due as a matter of fact. *See Stauch,* 212 F.3d at 431 ("Although, the question of whether the procedural safeguards provided ··· are adequate to satisfy due process is a question of law for the court to determine, whether the [defendant] indeed provided the [plaintiff] with such procedure is a question of fact for the jury.").

iii. Adequacy of the notice, hearing, and decision-maker provisions on their face. The Eighth Circuit Court of Appeals has observed that, "[i]n applying the *Mathews v. Eldridge* balancing analysis, the Supreme Court has generally held that the Due Process Clause requires some kind of a hearing before the state may deprive a person of liberty or property." *Gentry v. City of Lee's Summit, Mo.,* 10 F.3d 1340, 1344 (8th Cir.1993) (citing *Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985), which required a hearing before termination of employment, *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 18, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978), which required a hearing before cutting off utility service, and *Fuentes v. Shevin,* 407 U.S. 67, 80-84, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), which required a hearing before issuance of a writ allowing repossession of property). Indeed, more recently, the Eighth Circuit Court of Appeals has stated, "An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing ****924*** that is appropriate to the nature of the case." *Stauch,* 212 F.3d at 430 (citing *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)); *Bliek,* 102 F.3d at 1475 ("In determining what process is due in this circumstance, we note that the need for an *adequate* notice is also settled law. Adequate notice is integral to the due process right to a fair hearing, for the 'right to be heard has little reality or worth unless one is informed.' ") (emphasis in the original; quoting *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). Moreover, "[t]he right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner." *Stauch,* 212 F.3d at 430 (internal citations and quotation marks omitted). A *post-deprivation* hearing may suffice, if, under the *Mathews* balancing test, the state's interest in urgent action outweighs the private interest in a pre-deprivation hearing, and the risk of an erroneous deprivation is relatively low. *See Wallin,* 153 F.3d at 691. Similarly, " '[i]n general, due process requires that a hearing before *an impartial decisionmaker* be provided at a meaningful time, and in a meaningful manner.' " *Johnson,* 172 F.3d at 537 (quoting *Coleman v. Watt,* 40 F.3d 255, 260 (8th Cir.1994)) (emphasis added); *Gordon v. Hansen,* 168 F.3d 1109, 1114 (8th Cir.1999).

The State Defendants are correct that the Iowa Code provides that the appropriate placement of an involuntarily committed person is supposed to be made following evaluation and recommendation by a qualified mental health care professional. *See* IOWA CODE §§ 229.10 (providing for an examination of the respondent by one or more licensed physicians who must file a written report concerning whether the respondent is seriously mentally impaired), 229.13 (following the determination of serious mental impairment, the referee is to order further evaluation by the chief medical officer of the facility to which the person is initially committed at the "hospitalization hearing"), 229.14 (providing four alternative findings to be made by the chief medical officer upon further evaluation of the person committed regarding ultimate placement). However, nothing in the Iowa Code requires a further hearing on the placement recommendation, *see* IOWA CODE § 229.14, and the bottom tier of Exhibit A above. Rather, pursuant to IOWA CODE § 229.14(4), if the chief medical officer who evaluates the committed person after commitment concludes that the person "is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further treatment in a hospital," the chief medical officer "shall recommend an alternative placement for the respondent and the court shall enter an order which may direct the respondent's transfer to the recommended placement," and "[i]f the court or the respondent's attorney considers the placement inappropriate, an alternative placement may be arranged upon consultation with the chief medical officer and approval of the court." Section 229.14(4) thus does not mandate notice and a hearing as a procedural safeguard for the liberty interest in appropriate placement, but instead places the onus on the committed person's attorney to object to an inappropriate placement, which "may" result in an alternative placement after "consultation." This provision should be contrasted with § 229.7, which mandates service of a notice upon the person to be involuntarily committed of the application for involuntary commitment and of the time and place for the initial "hospitalization" hearing, which procedural safeguards protect the person's initial liberty interest in light of the possibility of impending custody. *See* IOWA CODE § 229.7.

Moreover, there is no hearing procedure of any sort mandated by the Iowa Code if the county responsible for paying for the committed person's placement refuses to pay for that placement. Although the placement recommendation is in the hands of the "chief medical officer" of the hospitalization facility, and is decided by the hospitalization referee, *see**925* IOWA CODE§ 229.14(4), section 229.1B does require that the ultimate placement be pursuant to the "single entry point process" if a county is to foot the bill. IOWA CODE § 229.1B; *see also* IOWA CODE § 230.1 (a county is only responsible for costs of commitment if the services were authorized through the single entry point process). This "funding" limitation effectively places the ultimate placement decision with the single entry point system, but there are no provisions in the code for a hearing on the decision dictated by the single entry point system. Although the recommendation as to ultimate placement is to be made by the chief medical officer of a facility designated for initial hospitalization by the single entry point system, *see* IOWA CODE § 229.13, that requirement does not indicate in what way a county's single entry point system is to have input into the determination of the committed person's ultimate placement, or in what way a respondent is to be heard on the placement. Certainly, there is no provision for a hearing on a county's "veto" of a placement determination made by the referee on the chief medical officer's recommendation pursuant to IOWA CODE § 229.14.

Thus, there is a very serious risk of an erroneous deprivation of an involuntarily committed person's liberty interest in an appropriate placement, despite the strength of the individual's interest in adequate due process protections and the lack of any substantial contrary interest on the part of the government. *See Mathews,* 424 U.S. at 335, 96 S.Ct. 893; *Wallin,* 153 F.3d at 690; *see also Youngberg,* 457 U.S. at 321, 102 S.Ct. 2452 ("whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests"). Therefore, as a matter of law, Iowa's statutory provisions fail to provide any notice or hearing that addresses the denial by a county, through its single entry point system, of an involuntarily committed person's liberty interest in an appropriate placement. *See Stauch,* 212 F.3d at 431 ("the question of whether the procedural safeguards provided ··· are adequate to satisfy due process is a question of law for the court to determine").

Nor are the additional grievance procedures identified by the County sufficient to overcome the procedural inadequacies of the statutory system. First, any grievance procedures concerning state Title XIX funding are irrelevant, because whether or not a county is responsible for funding mental health services for a person under involuntary commitment is not determined, under the statutory system in place in 1998, by whether or not state funds were available, but on the basis of whether or not the county was the committed person's "county of legal settlement." *See* IOWA CODE § 230.1 ("The necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid ··· [b]y the county in which such person has a legal settlement, or ··· [b]y the state when such person has no legal settlement in this state, or when such settlement is unknown."). There is no dispute here that Woodbury County is, and was at all relevant times, Salcido's county of legal settlement. Second, the grievance procedures provided by Tri-State upon denial of services under the County's plan cannot satisfy due process requirements on their face, because Tri-State only provides procedures for appeal if someone is denied services after a voluntary application. There are no such procedures for notifying individuals who are in the involuntary commitment process that an ultimate placement pursuant to IOWA CODE § 229.14 will not be funded or approved. *See* Plaintiff's Documents In Support of Motion For Summary Judgment at 45 (Woodbury County Mental Health Services management Plan, May 1, 1996 (approved by IDHS 12/7/98), § 8, ¶ 2) (providing that "[w]hen *an individual requests* funding for services," but such services are denied, the individual shall be advised of the right to appeal, but providing no appeal procedures for an involuntarily committed person or denial of judicially*926* ordered services) (emphasis added). Thus, the grievance procedures provided by the County also fail to provide adequate process to protect Salcido's liberty interest in adequate placement as a matter of law. *Stauch,* 212 F.3d at 431. The absence of any notice and hearing procedures on placement necessarily establishes that there is no provision on the face of the procedures for an impartial decision-maker on placement, either.

iv. Adequacy of the notice and hearing procedures actually provided. The court therefore turns to what is ordinarily a question for the jury, whether the procedures actually provided to Salcido were sufficient to provide due process safeguards on his liberty interest in an appropriate placement. *See id.* ("[W]hether the [defendant] indeed provided the [plaintiff] with such procedure is a question of fact for the jury."). The court must " 'look more closely at the procedures [the plaintiff] actually received, to see if they adequately protected him against the risk of an erroneous deprivation of his [protected] interest.' " *Wallin,* 153 F.3d at 691 (quoting *Ibarra v. Martin,* 143 F.3d 286, 290 (7th Cir.1998)).

The State Defendants contend that the flaw in the system that Salcido has identified was the County's refusal to follow the statutory provisions by approving and funding an appropriate placement. At oral arguments, the State Defendants contended that the statutes in question permit the County to "designate" Salcido's placement pursuant to the single entry point system, but do not permit the County to refuse to provide such services, citing, *e.g.,* the "designation" language in IOWA CODE §§ 229.11, and 229.13. Thus, it would appear that the State Defendants' are arguing that any procedural shortcomings in the statutory system regarding notice, hearing, and an impartial decision-maker on the question of ultimate placement were not the impediment in Salcido's case, and hence no due process violation is

actually attributable to the State Defendants. However, as a matter of law, it is precisely at the point where § 229.14 provides inadequate procedural safeguards concerning ultimate placement that the process broke down in this case. The application for Salcido's involuntary commitment pursuant to IOWA CODE § 229.6 was filed on July 9, 1998. *See* flow chart, *supra* at page 920. The referee ordered Salcido taken into immediate custody at Marian Hospital pursuant to IOWA CODE § 229.11. No party has asserted that Marian Hospital was not the facility "designated" under the County's single entry point system for immediate custody as required by IOWA CODE § 229.11. However, at Salcido's "hospitalization hearing" pursuant to IOWA CODE § 229.12 on July 15, 1998, the referee not only read Dr. Muller's evaluation as satisfying the requirements of IOWA CODE § 229.10-concerning the licensed physician's report, following examination, on whether Salcido was seriously mentally impaired and subject to initial "hospitalization"-but also apparently considered Dr. Muller's report as satisfying the requirements of IOWA CODE § 229.14-which requires a report of the chief medical officer of the "hospitalization" facility concerning ultimate disposition. This is so, because both the referee's "Findings of Fact Pursuant to Iowa Code Section 229.13," which found Salcido seriously mentally impaired and noted that Dr. Muller had recommended residential treatment, *see* Plaintiff's Documents at 10, and the referee's "Order After Evaluation Pursuant To Iowa Code Section 229.14," which noted that Dr. Muller found Salcido to be seriously mentally impaired, but no longer in need of acute in-patient treatment, and ordered Salcido held at Marian Health Center pending transfer to CMHI, *see* Plaintiff's Documents at 11, are dated July 15, 1998. The statutory scheme provided no notice, hearing, or impartial decision-maker regarding Salcido's ultimate placement, and the referee held no such hearing when the County refused to permit the placement. Although it is unlikely that the delay between the hospitalization hearing***927** and the ultimate placement recommendation contemplated by IOWA CODE § 229.13 would have made any difference in this case, in light of the County's position, the "telescoping" of the "hospitalization" determination and the ultimate placement determination in this case provided no opportunity for either the examining physician or the referee to determine what ultimate placement was available under the County's single entry point system. Thus, the flaw in the statutory scheme actually was responsible for the denial of Salcido's due process rights to notice and a hearing on denial of an appropriate placement.

[5] For its part, the County contends that Salcido actually *had* an adequate hearing on the denial of his placement at CMHI, because the County acquiesced in and even expedited Dr. Muller's "appeal" of the denial of that placement. The County contends further that Salcido received the due process protection of an impartial decision-maker, because his "appeal" was heard by the Woodbury County Board of Supervisors. Salcido contends that any hearing on ultimate placement that he received was tainted by the lack of an impartial decision-maker, because the Board of Supervisors is responsible for funding mental health services and therefore cannot be impartial in determining who should receive such funds. The court will assume, for the sake of argument, that *if* the Board of Supervisors is an impartial decision-maker, Salcido actually received, or there are genuine issues of material fact as to whether he received, an adequate notice and hearing on the County's denial of his placement at a facility capable of providing adequate treatment.

v. Impartiality of the decision-maker. "While the Due Process Clause requires a tribunal to be fair and impartial, *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613, 64 L.Ed.2d 182 (1980), the Supreme Court has stated that an adjudicator's slight pecuniary interest in the outcome of the proceedings does not in itself violate due process." *Marler v. Missouri Bd. of Optometry*, 102 F.3d 1453, 1457 (8th Cir.1996) (citing *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825-26, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986)). Nor does the combination of investigatory and adjudicatory functions necessarily require a conclusion that a tribunal is biased. *See Gordon*, 168 F.3d at 1114. Rather, " '[w]e begin with a presumption that decision-makers are honest and impartial.' " *Gordon*, 168 F.3d at 1114. That presumption can be overcome only by a showing that the adjudicator had such an interest as "might lead him not to hold the balance [between the parties] nice, clear and true." *Tumey v. Ohio*, 273 U.S. 510, 532, 47 S.Ct. 437, 71 L.Ed. 749 (1927); *Yamaha Motor Corp. v. Riney*, 21 F.3d 793, 798 (8th Cir.1994) (quoting *Tumey*); *see also Ward v. Monroeville*, 409 U.S. 57, 59, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) (the presumption may be overcome where the " 'judge ··· has a direct, personal, substantial pecuniary interest in reaching a conclusion against [a party] in his case' ") (quoting *Tumey*, 273 U.S. at 523, 47 S.Ct. 437). Notwithstanding the presumption that a tribunal is fair, Salcido contends that the question of the impartiality of the decision-maker in this case, the Board of Supervisors, is controlled or guided by the Supreme Court's decision in *Ward v. Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972). In *Ward*, the petitioner contested, on due process grounds, a provision of the Ohio Code that authorized mayors to sit as judges in cases of ordinance violations and certain traffic offenses. *Ward*, 409 U.S. at 57, 93 S.Ct. 80. The petitioner had been convicted by the mayor of Monroeville, Ohio, of two traffic offenses and fined $50 on each offense. *Id.*"Conceding that 'the revenue produced from a mayor's court provides a substantial portion of a municipality's funds,' the Supreme Court of Ohio held nonetheless that 'such fact does not mean that a mayor's impartiality is so diminished thereby that he cannot act in a disinterested fashion in a judicial capacity.' " ***928** *Id.* at 59, 93 S.Ct. 80. The United States Supreme Court, however, disagreed. *Id.*

The United States Supreme Court concluded that the issue turned on whether the mayor can be regarded as an impartial judge under principles the Court had laid down in *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed.

749 (1927):
There, convictions for prohibition law violations rendered by the Mayor of North College Hill, Ohio, were reversed when it appeared that, in addition to his regular salary, the Mayor received $696.35 from the fees and costs levied by him against alleged violators. This Court held that 'it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case.' *Id.*, at 523, 47 S.Ct., at 441.
The fact that the mayor there shared directly in the fees and costs did not define the limits of the principle. Although "the mere union of the executive power and the judicial power in him cannot be said to violate due process of law," *id.*, at 534, 47 S.Ct., at 445 the test is whether the mayor's situation is one "which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused···" *Id.*, at 532, 47 S.Ct., at 444. Plainly that "possible temptation" may also exist when the mayor's executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court. This, too, is a "situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, (and) necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him." *Id.*, at 534, 47 S.Ct., at 445. *Ward*, 409 U.S. at 59-60, 93 S.Ct. 80. The Supreme Court rejected the sufficiency of purported additional safeguards, including the opportunity to assert the bias of the mayor in separate proceedings, and the availability of an appeals process. *Id.* at 61, 93 S.Ct. 80. The Court noted that "there is nothing to suggest that the incentive to convict would be diminished by the possibility of reversal on appeal," nor is the eventual offer of an impartial adjudication adequate. *Id.* Rather, a person is "entitled to a neutral and detached judge in the first instance." *Id.* at 61-62, 93 S.Ct. 80.
Salcido argues that his interest is greater than that of the petitioner in *Ward,* since the denial of an adequate placement in his case deprives him completely of his liberty interest in adequate treatment, as compared to the imposition of fines for traffic violations in *Ward,* while the County Board's pecuniary interest is as substantial as the mayor's in *Ward,* albeit of a somewhat different kind, because mental health services constitute approximately 21% of the County's budget, which is set by the Board. Thus, Salcido contends, the persons making the determination on placement are motivated to limit the County's financial responsibility for civilly committed persons. The County, however, contends that there are genuine issues of material fact as to impartiality where none of the Board members had the sort of direct, pecuniary interest displayed by one of the decision-makers in *Yamaha Motor Corp. v. Riney*, 21 F.3d 793, 798 (8th Cir.1994), and none served as both an investigator and adjudicator or had other personal involvement in the case, citing *Malek v. Laurie Smith Camp*, 822 F.2d 812, 816 (8th Cir.1987). The County also contends that no reasonable inference of pecuniary interest can be drawn in this case, because the Board based its decision on three objective factors: (1) Salcido's primary diagnosis is dementia, which is excluded from the definition of mental illness in the County's Management Plan, and the County's Management Plan had been approved ***929** by the Iowa Department of Human Services; (2) the Board "conceived of the County's Management Plan as the provision of services of last resort," while Salcido, as a recipient of Title XIX funds, had not exhausted his appeal rights defined in the contract between the IDHS and Merit; and (3) the County's Management Plan then in place, and made effective retroactively to July 1, 1998, "does not provide long-term residential care services for any member of the MI/CMI [Mentally Ill/Chronically Mentally Ill] population." Plaintiff's Documents in Support of Motion for Summary Judgment at 38-39; *see also* Woodbury County's Combined Resistance To Plaintiff's Motion For Summary Judgment and Brief In Support [Of] Motion For Summary Judgment By Woodbury County, Iowa (County's Brief) at 8-9.
First, the court concludes that *Ward* is determinative. The court agrees with the County that there is no indication of any personal involvement in the investigation of Salcido's case on the part of any member of the decision-making body here, as there was in *Malek*, 822 F.2d at 816. Nor is there any indication of the sort of personal pecuniary interest displayed in *Riney*, 21 F.3d at 797-98. In *Riney,* the Eighth Circuit Court of Appeals held that the district court's finding of no evidence of bias was clearly erroneous, after applying the *Tumey/Ward* test of "whether the adjudicator's situation might lead him not to hold the balance [between the parties] nice, clear and true,' " where one member of the state motor vehicle commission hearing a claim that a Yamaha dealer agreement failed to comply with state law regarding dealership contracts was a Harley Davidson dealer with "a pecuniary interest in eradicating Yamaha from the State of Arkansas," and other evidence indicated he had "abdicated his role as an adjudicator and had prejudged the issues before him." *Riney*, 21 F.3d at 798. Such circumstances are not presented here. Nevertheless, *Ward* stands for the proposition that a personal pecuniary interest of a particular decision-maker is not required to offend due process. *See Ward*, 409 U.S. at 60, 93 S.Ct. 80 ("The fact that the mayor [in *Tumey*] shared directly in the fees and costs did not define the limits of the principle."). Rather, the Court in *Ward* formulated the test as "whether the [decision-maker's] situation is one 'which would offer a possible temptation to the average man as a judge to forget the burden of proof required ··· or might lead him not to hold the balance nice, clear and true between [the parties].' " *Id.* (quoting *Tumey*, 273 U.S. at 532, 47 S.Ct. 437). Even more specifically, the Court held that "[p]lainly that 'possible temptation' may also exist when the mayor's responsibilities for village finances may make him

partisan to maintain the high level of contribution from the mayor's court." *Id.* Thus, the test of bias, as defined and applied in *Ward,* does not consider just whether there was a personal pecuniary interest of the decision-maker or any individual member of the decision-making body. Rather, the test in *Ward* also considers whether institutional concerns of the entity overseen by the decision-maker would pose a "possible temptation" to the decision-maker to disregard proper standards for the decision and instead decide on some other basis, such as institutional finances. *See id.; see also DePiero v. City of Macedonia,* 180 F.3d 770, 778 (6th Cir.1999) (stating, "Although direct personal pecuniary interest of a mayor in a result of his judgment is arguably one of the most flagrant forms of bias, it is not the only reason for holding that due process is denied," and concluding that *Tumey* and *Ward* both stand for the proposition that the decision-maker's interest in financial needs of a municipality of which he is an executive officer may fail the "possible temptation" test), *cert. denied,*528 U.S. 1105, 120 S.Ct. 844, 145 L.Ed.2d 713 (2000); *Alpha Epsilon Phi Tau Chapter Housing Ass'n v. City of Berkeley,* 114 F.3d 840, 843 (9th Cir.1997) (adopting the district court's characterization of *Ward* as holding that due process is offended "where decision-makers have an institutional financial interest that may lead them ***930** to make biased decisions"); *Doolin Sec. Sav. Bank, F.S.B. v. F.D.I.C.,* 53 F.3d 1395, 1406 (4th Cir.1995) (noting that "[t]he Supreme Court has held that institutional pecuniary interests rendered the adjudicator unconstitutionally biased," citing *Ward*), *cert. denied,*516 U.S. 973, 116 S.Ct. 473, 133 L.Ed.2d 402 (1995).

Second, although *Ward* involved the exercise of judicial functions that were likely to produce substantial *income* for the municipality by a municipal executive with "responsibilities for village finances," *see Ward,* 409 U.S. at 60, 93 S.Ct. 80, and the present circumstances involve the exercise by the executives responsible for the County's finances of judicial functions that were likely to involve substantial *outlays* from the County coffers, the situations are nonetheless analogous. There is undoubtedly the same "possible temptation" here that the County Board's responsibilities for the County budget-and more specifically, responsibilities for the County's mental health budget, which forms a very substantial part of County's entire budget-"may also exist when the [Board's] executive responsibilities for [County] finances may make [them] partisan to maintain" a low level of expenditures for mental health services or not to burden the mental health budget with the costs of services in a particular case. *Cf. Ward,* 409 U.S. at 60, 93 S.Ct. 80. "This, too, is a 'situation in which [the County Board] perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, (and) *necessarily* involves a lack of due process of law in the [consideration of an appeal of the denial of mental health services].' " *Id.* (quoting *Tumey,* 273 U.S. at 534, 47 S.Ct. 437) (emphasis added); *accord Meyer v. Niles Township,* 477 F.Supp. 357, 362 (N.D.Ill.1979) (holding that township supervisors cannot impartially adjudicate claims for benefits and supervise funds out of which benefits are paid). To the extent the "appeal" of single entry point determinations to the County Board was dictated by a provision of the Iowa Administrative Code, *see* 441 IOWA ADMIN. CODE § 25.13(2)(j), that administrative directive also constitutes a violation of due process in the case of determinations of placement for involuntary commitments.

Finally, the court concludes that it need not consider whether the "objective" foundations for the County's denial of services in Salcido's case generate genuine issues of material fact as to the impartiality of the Board, where *Ward* holds that the position of decision-makers as judges and partisans in analogous circumstances *necessarily* violated due process, not merely that the circumstances gave rise to a rebuttable presumption of partiality. *See Ward,* 409 U.S. at 60, 93 S.Ct. 80. Nevertheless, in the alternative, assuming that only a rebuttable presumption of partiality is established by the circumstances identified in *Ward* and presented here, the court cannot find that *reasonable* inferences on the impartiality of the Board are presented. *See Matsushita Elec. Indus. Co.,* 475 U.S. at 587, 106 S.Ct. 1348 (the court must consider *reasonable* inferences that can be drawn from the facts).

As to denial based on Salcido's diagnosis of dementia, nothing permitted the County to define "mental illness" for purposes of the single entry point system, as it relates to involuntarily committed individuals, differently from the statutory definition of "mental illness" for purposes of involuntary commitment in IOWA CODE § 229.1(7). Thus, reliance on a different definition generates only inferences of an attempt to avoid the statutory definition, and hence, to avoid providing statutorily mandated services. Although the County apparently relies on approval of its County Management Plan by the IDHS as establishing the Board's good faith reliance on the definition of "mental illness" in its Plan, the County Board relied on a Plan and a definition that had not yet been approved at the time Salcido was originally denied placement. Rather, the Plan last approved by the IDHS, the County's Plan for fiscal 1998 (calendar year 1997-1998), defined as eligible persons those who "[h]ave been found to be seriously mentally impaired***931** and involuntarily court-ordered to receive services." *See* State Defendants' Statement Of Undisputed Facts, Exhibit 5, County Management Plan Effective July 1, 1996, Sec. F, ¶ 2 (documents page 78). Pursuant to IOWA CODE § 331.439(1)(e), "[c]hanges to the approved plan are submitted at least sixty days prior to the proposed change and are not to be implemented prior to the director of human services' approval." Similarly, whatever the County's "conception" of its Management Plan as "provision of services of last resort," the Iowa Code unequivocally established the County's responsibility, in the *first* instance, for the costs of mental health services for involuntarily committed persons with legal settlement in the County, *see* IOWA CODE § 230.1, so that any contrary "conception" suggests only a refusal to bear statutorily required expenses. Finally, the only reasonable inference that arises from attempts to apply retroactively the County's fiscal 1998 Plan-which denied long-term residential care

services, but was not approved until December 7, 1998- as a justification on appeal for a denial of services for Salcido months earlier in July of 1998 is that the justification is pretextual. Thus, all of the County Board's "objective" reasons for denying Salcido an appropriate placement in July of 1998 suggest only post-hoc, pretextual justifications that undermine, rather than support, any contention that the Board constituted an impartial decision-maker as required by due process. *See Johnson,* 172 F.3d at 537 (" 'In general, due process requires that a hearing before *an impartial decisionmaker* be provided at a meaningful time, and in a meaningful manner.' ") (quoting *Coleman,* 40 F.3d at 260).

Therefore, the court concludes that Salcido is entitled to summary judgment against both the County and the State Defendants to the effect that the defendants violated his due process rights to notice and a hearing before an impartial decision-maker on appropriate placement, both on the face of the pertinent statutory and administrative provisions, and as procedures were actually applied in Salcido's case.

C. Salcido's Disability Discrimination Claims

All parties have also moved for summary judgment in their favor on Salcido's disability claims pursuant to Title II of the ADA and the Rehabilitation Act. As the Eighth Circuit Court of Appeals has explained, claims under the RA and Title II of the ADA are closely related: Title II of the ADA "prohibits qualified individuals with disabilities from being excluded from participation in or the benefits of the services, programs, or activities of a public entity." *Randolph v. Rodgers,* 170 F.3d 850, 857 (8th Cir.1999). Similarly, § 504 of the Rehabilitation Act mandates that "[n]o otherwise qualified individual with a disability ··· shall ··· be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance····"29 U.S.C. § 794(a) (2000). We have held that the enforcement, remedies, and rights are the same under both Title II of the ADA and § 504 of the Rehabilitation Act. *See Hoekstra [v. Independent Sch. Dist. No. 283,]* 103 F.3d [624,] 626 [(8th Cir.1996)]. As an affirmative defense, a defendant may demonstrate that the requested accommodation would constitute an undue burden. *See Gorman,* 152 F.3d at 911.

Birmingham v. Omaha Sch. Dist., 220 F.3d 850, 856 (8th Cir.2000); *Gorman v. Bartch,* 152 F.3d 907, 911-12 (8th Cir.1998) (describing the requirements of the two statutes and stating "[t]he ADA has no federal funding requirement, but it is otherwise similar in substance to the Rehabilitation Act, and 'cases interpreting either are applicable and interchangeable' ") (quoting *Allison v. Department of Corrections,* 94 F.3d 494, 497 (8th Cir.1996)).

As the Eighth Circuit Court of Appeals has also explained,

To state a prima facie claim under the ADA, a plaintiff must show: 1) he is a ***932** person with a disability as defined by statute; 2) he is otherwise qualified for the benefit in question; and 3) he was excluded from the benefit due to discrimination based upon disability. *See*42 U.S.C. § 12131 *et seq.; see also Gorman [v. Bartch],* 152 F.3d [907,] 911-12 [(8th Cir.1998)]; *Doe v. University of Md. Med. Sys. Corp.,* 50 F.3d 1261, 1265 (4th Cir.1995). The RA contains the additional requirement that the plaintiff show the program or activity from which he is excluded receives federal financial assistance. *See Gorman,* 152 F.3d at 911; *Thomlison v. City of Omaha,* 63 F.3d 786, 788 (8th Cir.1995).

Randolph v. Rodgers, 170 F.3d 850, 858 (8th Cir.1999). Moreover, "[t]o establish a *violation* of the Acts, [the plaintiff] must demonstrate: 1) he is a qualified individual with a disability; 2) he was excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the entity; and 3) that such exclusion, denial of benefits, or other discrimination, was by reason of his disability." *Layton v. Elder,* 143 F.3d 469, 472 (8th Cir.1998) (elements of a claim pursuant to Title II of the ADA) (emphasis added); *and compare Gorman,* 152 F.3d at 911 (RA case, citing 29 U.S.C. § 794(a) and *Layton* for a statement of the elements the plaintiff must prove "to prevail," adding to the second element that the plaintiff must prove that the program or activity is that of a public entity "which receives federal funds").

1. Disability discrimination by the State Defendants

Salcido contends that there is no genuine issue of material fact (1) that he was a qualified individual with a disability, because he had met the eligibility requirements for mental health services, where he had been involuntarily committed pursuant to IOWA CODE CH. 229; (2) that he was denied benefits; and (3) that the denial was based on his disability, dementia. He contends that the State Defendants approved the County's discriminatory plan, which excludes services for persons suffering from dementia, and also denied him admittance to CMHI on the basis of the County's refusal to pay pursuant to that discriminatory plan. He therefore contends that he is entitled to prospective injunctive relief enjoining the State Defendants from denying him admittance to CMHI for these discriminatory reasons. Although the State Defendants relied primarily on a reassertion of their contention that the Eleventh Amendment bars Salcido's disability discrimination claims, a contention this court rejected in ruling on the State Defendants' motion to dismiss, *see Salcido,* 66 F.Supp.2d at 1043-45,[FN8] they ***933** also contend that they, not Salcido, are entitled to summary judgment on the merits of his disability discrimination claims against them. As to the merits of Salcido's allegations of disability discrimination, the State Defendants contend that neither the State's approval of the County's plan nor the State's refusal to admit Salcido to CMHI is sufficient to establish liability for disability discrimination, where the State had no way of knowing that the County would interpret its plan in a discriminatory way and relied only on the County's

refusal to pay for services, not the County's discrimination, as the basis for refusing admission to CMHI.
FN8. By letter dated August 17, 2000, the Iowa Attorney General's Office advised the court that it has joined with thirteen other states in an *amicus* brief to the United States Supreme Court in *University of Alabama v. Garrett,* No. 99-1240, which is on *certiorari* from a decision of Eleventh Circuit Court of Appeals, Garrett v. University of Alabama, 193 F.3d 1214 (11th Cir.1999), urging the Court to uphold the applicability of the ADA to the states. However, the Attorney General's Office also advised this court that, notwithstanding the State's position in *Garrett,* the State would continue to assert Eleventh Amendment immunity under existing Eighth Circuit Court of Appeals precedent as long as such a defense was viable.

Therefore, in resistance to Salcido's motion for summary judgment and in support of their own motion for summary judgment, the State Defendants reasserted their Eleventh Amendment immunity to Salcido's disability discrimination claim. They point out that the Eighth Circuit Court of Appeals has concluded that both the RA and Title II of the ADA exceed Congress's power under § 5 of the Fourteenth Amendment. Consequently, they contend that the court improperly concluded that *Ex Parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), permits a suit for prospective injunctive relief against state officials in their official capacities to comply with federal laws that have been determined to exceed congressional power. They contend that *Bradley v. Arkansas Dep't of Ed.,* 189 F.3d 745, 753-54 (8th Cir.1999), upon which the court relied, has been vacated, and that, in any event, the pertinent portion of *Bradley* is *dicta.* They contend that the *dicta* portion of the *Bradley* decision is contrary to explicit holdings of other Circuit Courts of Appeals. They also contend that *Ex Parte Young* is inapplicable here, because that decision does not permit the court to opine on the legality of past conduct by the State. They also contend that *Ex Parte Young* is inapplicable where there is a specific remedial statute, as there is in the case of the ADA and the RA, citing *Seminole Tribe v. Florida,* 517 U.S. 44, 74, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996).

In his reply brief, Salcido asserts that this court properly analyzed the issue of the State Defendants' Eleventh Amendment immunity in its ruling on the State Defendants' motion to dismiss and no intervening, controlling decision requires a different result. Salcido also contends that the RA and Title II of the ADA have only been determined to exceed the scope of Congress's power *under § 5 of the Fourteenth Amendment,* and thus are not necessarily "unconstitutional" enactments, and so may still provide the basis for relief under *Ex Parte Young.*

The court finds that it need not reach the intricate and intriguing question of the interplay of Eleventh Amendment immunity and the *Ex Parte Young* exception here. Rather, the court concludes that, even if *Ex Parte Young* is applicable, and Salcido's claims of disability discrimination can go forward against the State Defendants notwithstanding Eleventh Amendment immunity of the State, there is no genuine issue of material fact that prevents summary judgment in favor of the State Defendants on Salcido's disability discrimination claim. The State Defendants concede, for the purposes of summary judgment, that Salcido was a disabled person qualified for the program at CMHI and that he was denied admission to CMHI. However, they contend that there is no genuine issue of material fact that *they* did not exclude Salcido from CMHI because of his disability. Thus, the State Defendants' contentions require the court to focus on the last requirement of Salcido's disability discrimination claim, whether Salcido was denied admission to CMHI "by reason of his disability." *See Layton,* 143 F.3d at 472 (elements of a claim pursuant to Title II of the ADA); *Gorman,* 152 F.3d at 911 (elements of a claim pursuant to the RA).
[6] One issue regarding the applicability of *Ex Parte Young* must nevertheless be addressed in light of these contentions. That issue is the State Defendants' contention that *Ex Parte Young* does not permit the court to opine on the legality of the defendants' past conduct, as that decision permits only *prospective* relief. In *Entergy, Ark., Inc. v. Nebraska,* 210 F.3d 887 (8th Cir.2000), the Eighth Circuit Court of Appeals rejected a similar contention:
Nebraska's argument that injunctive relief under *Ex Parte Young* cannot be premised on proof of past misconduct by the state is similarly without merit: such relief is "available where a plaintiff alleges an ongoing violation of federal law, and where the relief sought is prospective rather than retrospective." *Idaho v. Coeur d'Alene Tribe of Idaho,* 521 U.S. 261, 294, 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997) (O'Connor, J., concurring) (emphasis in original). While the relief granted under *Ex Parte Young* may only be prospective, proof for the claim necessitating relief can be based on historical facts, and most often will be. *See, e.g., Edelman v. Jordan,* 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974) (state had failed to provide aid within federally imposed time limits).
Entergy, Ark., Inc., 210 F.3d at 898. Thus, the court not only can, in this case it must, determine whether the State Defendants violated the RA and Title II of the ADA, and whether that violation continues, ***934*** to determine whether any relief can be granted within the scope of *Ex Parte Young.* Again, the past and continuing violations Salcido alleges were perpetrated by the State Defendants are the State Defendants' approval of the County's discriminatory plan and their refusal to admit him to CMHI on the basis of the County's discriminatory plan.

a. Liability based on plan approval

As the court noted above, the County apparently relies on approval of its County Management Plan by the IDHS as establishing the Board's good faith reliance on a definition of "mental illness" in its Plan that excluded dementia, and hence, excluded Salcido from coverage.

Similarly, Salcido apparently contends that the State Defendants approved the County plan that discriminated against Salcido on the basis of his diagnosis of dementia, and thus excluded him from CMHI on the basis of the discriminatory plan. However, as the court concluded above, the County Board relied on a Plan and a definition that had not yet been approved by the State Defendants at the time Salcido was originally denied placement. The Plan last approved by the IDHS prior to the denial of Salcido's admission to CMHI, the County's Plan for fiscal 1998 (calendar year 1997-1998), defined as eligible persons those who "[h]ave been found to be seriously mentally impaired and involuntarily court-ordered to receive services." *See* State Defendants' Statement Of Undisputed Facts, Exhibit 5, County Management Plan Effective July 1, 1996, Sec. F, ¶ 2 (documents page 78). Pursuant to IOWA CODE § 331.439(1)(e), "[c]hanges to the approved plan are submitted at least sixty days prior to the proposed change and are not to be implemented prior to the director of human services' approval." Consequently, no plan approved by the State Defendants permitted "discrimination" by the County on the basis of Salcido's diagnosis of dementia at the time Salcido was first denied admission to the CMHI. Therefore, the State Defendants cannot be liable for any discrimination by the County based on approval of the County's purportedly discriminatory plan. Moreover, the State Defendants' subsequent approval of the version of the County's Plan that contained the purportedly discriminatory definition of "mental illness" is not responsible for Salcido's continued exclusion from CMHI,[FN9] where that plan is not applicable, as a matter of law, to Salcido's exclusion from mental health services while he was subject to involuntary commitment.[FN10]

FN9. Although Salcido has been admitted to the CMHI at state expense, that admission was pursuant to a stipulated preliminary injunction that reserved the rights of all parties to pursue their claims and defenses in this litigation. Hence, Salcido's continued exclusion from the CMHI, in the absence of the preliminary injunction, remains a "live" controversy.

> FN10. Nevertheless, the court is disturbed that the Director of the Iowa Department of Human Services could approve a county plan, such as the County's fiscal 1999 Plan, that did not provide mental health services for *all* persons involuntarily committed pursuant to IOWA CODECH. 229. The Director is to review the plan for compliance with the requirements of IOWA CODE § 331.439(1)(c)(2), some of which the court believes would have encompassed consideration of the County's definition of "mental illness." *See, e.g.* KeyCite Notes, IOWA CODE § 331.439(1)(c)(2)(1) (the enrollment and eligibility process), (b) (scope of services included). Certainly, the Director reviewed the County's 1999 plan for eligibility requirements for Title XIX recipients. Thus, the court is concerned that the Director's scrutiny of county plans may not be adequate.

b. Liability based on refusal to admit

[7] Salcido contends that the State refused to admit him to CMHI without County approval, and the County withheld its approval on the basis of its "discriminatory" plan, apparently suggesting that the State Defendants thereby adopted or ratified the County's discrimination. However, the State Defendants contend, and the only evidence in the record shows, that the State refused to admit Salcido to CMHI only because the County would not approve funding for his placement. Specifically, the record shows that, on July 29, 1998, CMHI informed Marian Health Center that it would not accept Salcido, because***935** defendant Woodbury County would not authorize Salcido's placement at CMHI.

Salcido himself points to only two pieces of evidence indicating why the State declined to admit him to CMHI. First, Salcido points to an answer by the State Defendants to an interrogatory concerning why the State did not "allow him to be admitted to [CMHI] in August, 1998, through December, 1998," which states the following:

Mr. Salcido has legal settlement and residency in Woodbury County. An application was filed in Woodbury County for his involuntary commitment pursuant to Iowa Code chapter 229. At the time this application was filed, there was no indication Mr. Salcido would pay his own costs of hospitalization or that he had any private insurance coverage. As a result, Woodbury County was responsible for the costs of his mental health care during his involuntary commitment. Iowa Code section 229.13 provides that for persons whose expenses are payable in whole or in part by a county the individual is to be committed to the care of a hospital or facility designated through the single entry point process. It was the responsibility of Woodbury County to designate a facility where Mr. Salcido should be placed following commitment. The central point coordination administrator from Woodbury County stated to DHS that she would not authorize Mr. Salcido's commitment to [CMHI]. Since Woodbury County did not designate it, Mr. Salcido could not be accepted at [CMHI].

State Defendants' Answer to Interrogatory No. 3, Plaintiff's Documents in Support of Summary Judgment at 60.

Similarly, Salcido points to a more detailed statement of the circumstances surrounding the State's refusal to admit Salcido to CMHI in the Affidavit of Cyndy Johnson, a psychiatric nurse employed by Marian Behavioral Care, who was involved with Marian Health Center staff in efforts to place Salcido at CMHI. *See* Affidavit of Cyndy Johnson, ¶ 1, Plaintiff's Documents in Support of Summary Judgment at 68. Ms. Johnson

avers, in pertinent part, as follows:
8. On June 26, 1998 [prior to commitment proceedings], I was advised that [CMHI] is unable to accept Medicaid funding until a patient is age 65 [Mr. Salcido was not yet 65] because it is a state facility. We attempted to find other placements. We also spoke with Lynn Nibblink at the Department of Human Services for the State of Iowa. According to her, Mr. Salcido's case could not be considered a state case because legal settlement was determined to be in Woodbury County. The state would have to follow the policies outlined in Woodbury County's plan. No placements were found that would accept Mr. Salcido's funding or meet his needs.

* * * * * *

14. On July 27, 1998 [after commitment by the hospitalization referee], another order was received from the court indicating that Mr. Salcido should be placed at [CMHI]. Woodbury County took no further action regarding funding. At this time, Brian Damon [a Marian Health Center social worker] was advised by Phil Jorgensen of [CMHI] that Harold Templeton, the Director of the Division of MR, MH, and DD, for the Department of Human Services, was concerned about accepting Mr. Salcido at [CMHI] because it would violate Woodbury County's plan. I was told that he wanted the matter referred to his legal counsel.
15. On July 29, 1998, Phil Jorgensen of [CMHI] advised Brian Damon, Marian Health Center Social Worker, that a bed was available for Mr. Salcido. He told Brian Damon that Mr. Salcido's case was in the hands of the Attorney General's Office and that the problem continued to be whether the placement of the patient at [CMHI] would violate Woodbury County's plan. He also stated that Woodbury County had not made provisions for the elderly at [CMHI] and ***936*** had not filed the CPC plan for that year and had not authorized the state to utilize last year's plan. Les Gurdin, the hospitalization referee, was contacted by Brian Damon. He stated that he had been on the phone for three hours with the attorney general and he asked that the hospital take no further action for the next few days. Mr. Jorgenson from [CMHI] advised Brian Damon that he was hoping to be able to accept Mr. Salcido within the next few days pending a ruling by the Attorney General····

* * * * * *

17. On August 3, Mr. Jorgenson of [CMHI] contacted Judy Graber [of Marian Health Center] regarding placement of Mr. Salcido at [CMHI]. He stated that he was not able to accept the patient until payment questions were answered. He also stated that he was unable to hold a bed any longer, but he would keep Mr. Salcido on the waiting list····
Affidavit of Cyndy Johnson, Plaintiff's Documents in Support Of Summary Judgment at 70-73.
Nothing in this evidence gives rise to a reasonable inference that the State declined to place Salcido at CMHI for any reason other than the County's refusal to pay for the placement, where the State believed the County was responsible for the costs of Salcido's commitment as Salcido's county of legal settlement. *See* Matsushita Elec. Indus. Co., 475 U.S. at 587, 106 S.Ct. 1348 (the court must consider *reasonable* inferences that can be drawn from the facts). The State's belief that the County was responsible for payment, but the County had not approved of the placement because it would "violate" the County's plan, does not give rise to any inference that the State's denial of placement for Salcido at CMHI was an adoption of a discriminatory rationale by the County or otherwise a denial of placement "by reason of [Salcido's] disability." Layton, 143 F.3d at 472 (elements of a claim pursuant to Title II of the ADA); Gorman, 152 F.3d at 911 (elements of a claim pursuant to the RA). Nor has Salcido offered any evidence indicating that the State's reason for denying Salcido placement at CMHI, because the County would not fund it, was a pretext for the State's own disability discrimination.
Therefore, the State Defendants are entitled to summary judgment on Salcido's disability discrimination claims pursuant to the RA and Title II of the ADA.

2. Disability discrimination by the County

Again, as to his disability discrimination claim against the County, Salcido contends that there is no genuine issue of material fact on any of the elements of his claim. Specifically, he contends that his diagnosis was plainly one of the bases upon which the County premised denial of services, and thus the County plainly discriminated against him "by reason of his disability." The County contends that Salcido is not a "qualified individual," although he may or may not be disabled, because he did not qualify for mental health services at County expense, because his diagnosis, dementia, was excluded from coverage under the County's Mental Health Services Management Plan. Similarly, the County contends that Salcido was not denied benefits by reason of his disability, or at the very least, there are genuine issues of material fact as to whether or not he was denied benefits by reason of his disability, where *all* persons with dementia are denied coverage under the County's Plan. Finally, the County contends that there are genuine issues of material fact as to whether any modification of its Plan would be reasonable.

a. Salcido's "qualification" for services

[8] As to the County's contention that Salcido cannot demonstrate the first element of his disability discrimination claim-that he is a *qualified* individual with a disability, Layton, 143 F.3d at 472 (elements of a claim pursuant to Title II of the ADA); Gorman, 152 F.3d at 911 (elements ***937*** of a claim pursuant to the RA)-because Salcido suffered from dementia, which was excluded from the County's Plan, is wrong as a matter of law. Salcido was disabled by his "dementia," and "qualified" for mental health services at County expense by virtue of his involuntary commitment pursuant to IOWA CODE CH. 229 and his legal settlement in the County. *See* IOWA CODE § 230.1 ("The necessary and legal costs and expenses attending the taking into

custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid ··· [b]y the county in which such person has a legal settlement, or ··· [b]y the state when such person has no legal settlement in this state, or when such settlement is unknown."). In other words, IOWA CODE CH. 229, not the County's Plan, determines "who ··· meets the essential eligibility requirements for the receipt of services" upon involuntary commitment, 42 U.S.C. § 12131(2) (defining "qualified individual with a disability" for purposes of Title II of the ADA); *see also*29 U.S.C. § 705(20) (defining "qualified individual with a disability" for purposes of the RA, 29 U.S.C. § 794(a) (erroneously referring to § 706(20)), as a qualified person who "has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment"); the County's Plan only becomes pertinent to where a person who has been involuntarily committed is placed, not to his or her qualification for services from a public entity upon involuntary commitment. *See* flow chart, *supra* at page 920, and discussion following in Section II.B.2.c.ii.

b. Discrimination "by reason of his disability"

[9] Thus, the question is whether or not the County's exclusion of Salcido from such services was by reason of his disability-the third element of his claim. *Layton,* 143 F.3d at 472 (elements of a claim pursuant to Title II of the ADA); *Gorman,* 152 F.3d at 911 (elements of a claim pursuant to the RA). Here again, the County's contentions are without merit as a matter of law. The County cites no authority for the proposition that persons with dementia as severe as Salcido's are not "disabled" within the meaning of the RA or Title II of the ADA. *See*29 U.S.C. § 794(a); 42 U.S.C. § 12131(2). Nor does exclusion of *all* persons with a specified disability, whatever the degree, from benefits provided to other disabled persons excuse discrimination by reason of that particular disability. The Supreme Court recently, and emphatically, rejected such a contention in *Olmstead v. L.C. by Zimring,* 527 U.S. 581, 119 S.Ct. 2176, 144 L.Ed.2d 540 (1999). Specifically, the majority in *Olmstead* rejected the dissent's "notion that 'this Court has never endorsed an interpretation of the term "discrimination" that encompassed disparate treatment among members of the same protected class,' *post,* at 2194 (opinion of Thomas, J.), that '[o]ur decisions construing various statutory prohibitions against "discrimination" have not wavered from this path,' *post,* at 2194-2195, and that 'a plaintiff cannot prove "discrimination" by demonstrating that one member of a particular protected group has been favored over another member of that same group,' *post,* at 2195-2196." *Olmstead,* 527 U.S. at 598 n. 10, 119 S.Ct. 2176. The majority stated that this contention was "incorrect as a matter of precedent and logic," and cited cases establishing the contrary proposition that discrimination is still actionable, even if it is only between members of a protected class. *Id.* Thus, the County's contention that there has been no discrimination by reason of Salcido's disability, dementia, when all persons with dementia are excluded from services, cannot be sustained. Indeed, the County's contention is as ludicrous as the suggestion that it wouldn't be discrimination "by reason of race" if all black persons were excluded from public services, but Asians and Hispanics were not excluded.

Moreover, the court rejected above the County's purportedly "objective"-and therefore presumably non-discriminatory ***938** -reasons for refusing to pay for Salcido's placement at CMHI. Just as these "objective" justifications provided no *reasonable* inferences as to the impartiality of the County Board of Supervisors, as the County contended in support of its motion for summary judgment on Salcido's procedural due process claim, they present no reasonable inferences that the County's decision was nondiscriminatory. *See Matsushita Elec. Indus. Co.,* 475 U.S. at 587, 106 S.Ct. 1348 (the court must consider *reasonable* inferences that can be drawn from the facts). To recapitulate briefly, nothing permitted the County to define "mental illness" for purposes of its Plan differently from the statutory definition of "mental illness" for purposes of involuntary commitment in IOWA CODE § 229.1(7), so that reliance on a different definition to exclude persons with dementia generates only inferences of an attempt to exclude persons with a specific disability, which is forbidden by *Olmstead.* Similarly, the County cannot rely in good faith on supposed approval of its Plan by the State, where the County Board relied on a Plan and a definition that had not yet been approved at the time Salcido was originally denied placement. Next, whatever the County's "conception" of its Management Plan as "provision of services of last resort," the Iowa Code unequivocally established the County's responsibility, in the *first* instance, for the costs of mental health services for involuntarily committed persons with legal settlement in the County, *see* IOWA CODE § 230.1, so that any contrary "conception" suggests only a refusal to bear statutorily required expenses on the basis of a particular disability. Finally, the only reasonable inference that arises from attempts to apply retroactively the County's fiscal 1998 Plan, which was not approved until December 7, 1998, as a justification on appeal for a denial of services for Salcido months earlier in July of 1998 is that the justification is pretextual. Thus, all of the County Board's "objective" reasons for denying Salcido an appropriate placement in July of 1998 suggest only post-hoc, pretextual justifications that undermine, rather than support, any contention that the Board had legitimate, non-discriminatory reasons for denying funding for Salcido's placement.

Therefore, as a matter of law, Salcido has demonstrated all of the elements of his disability discrimination claim against the County.

c. The County's affirmative defense

[10] As a last ditch stand, the County asserts that there are genuine issues of material fact as to whether a modification to its eligibility requirements to include services for involuntarily committed persons suffering from dementia would not be "reasonable." The court acknowledges that a defendant on a claim pursuant to the

RA or Title II of the ADA may raise an affirmative defense that the requested accommodation would constitute an undue burden. *See* Birmingham, 220 F.3d at 856; *Gorman*, 152 F.3d at 911. However, the court also agrees with Salcido that the County has not pointed to any shred of evidence that would generate a genuine issue of material fact as to such an affirmative defense in this case. "When a moving party has carried its burden under *Rule* 56(c)"-as Salcido has done here as to the County's liability for disability discrimination-"its opponent must do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586, 106 S.Ct. 1348. Rather, the non-movant, here the County, is required under Rule 56(e) to go beyond the pleadings, and by affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); *Celotex*, 477 U.S. at 324, 106 S.Ct. 2548; *Rabushka ex. rel. United States v. Crane Co.*, 122 F.3d 559, 562 (8th Cir.1997), *cert. denied*,523 U.S. 1040, 118 S.Ct. 1336, 140 L.Ed.2d 498 (1998); *McLaughlin v. Esselte Pendaflex Corp.*, 50 F.3d 507, 511 (8th Cir.1995). "[A] non-moving party may not rest upon mere denials or allegations," which is all that the County has offered here, "but ***939** must instead set forth specific facts sufficient to raise a genuine issue for trial." *Rose-Maston v. NME Hospitals, Inc.*, 133 F.3d 1104, 1107 (8th Cir.1998); *Thomas v. Runyon*, 108 F.3d 957, 959 (8th Cir.1997); *Ruby v. Springfield R-12 Pub. Sch. Dist.*, 76 F.3d 909, 911 (8th Cir.1996). Therefore, the County has failed to point to any evidence "such that a reasonable jury could return a verdict for the [County]" on the basis of its affirmative defense. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). As a matter of law, the County's bald assertion of the "unreasonableness" of requiring it to pay for Salcido's care does not establish the County's affirmative defense.

Moreover, the court concludes that any affirmative defense premised on the assertion that it is not reasonable for the County to modify its Plan to pay for the placement of involuntarily committed persons with dementia cannot stand in the face of the State's legislative mandate that the County, as the county of legal settlement, must pay "[t]he necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital." *See* IOWA CODE § 230.1. Modification of the County's Plan to comply with state law is "reasonable"; it is refusal to do so that is not reasonable.

Therefore, in the absence of a viable affirmative defense, Salcido is entitled to summary judgment in his favor against the County on his claims of disability discrimination in violation of the RA and Title II of the ADA.

D. The State Defendant's Cross-Claim Against The County

[11] Finally, the court turns to the State Defendants' motion for summary judgment in their favor against the County on their cross-claim, in which they assert that the County, as Salcido's county of legal settlement, is mandated by IOWA CODE CH. 229 to pay for services for Salcido at an appropriate facility following commitment proceedings, but the County has failed to do so.

1. Arguments of the parties

In support of their motion for summary judgment on their cross-claim, the State Defendants assert that the statutory scheme, which allocates the costs of care of involuntarily committed persons to the county of legal settlement, subject to the placement of such individuals to the institution designated by the county's single entry point plan, permits the responsible county to designate the place services can be provided in the most cost-effective manner, but does not give the county any authority to refuse to designate any placement or to refuse to pay for an appropriate placement. To read the code provisions to permit the county to escape its obligations would leave an involuntarily committed person with the right to care as his or her condition warrants that is established in IOWA CODE § 229.23, but no way to acquire the care to which he or she has a right. Such a reading, the State Defendants contend, would plainly violate *Youngberg* 's requirement that such persons receive "adequate" treatment. The State Defendants argue that the county responsible for costs of care cannot escape that responsibility when an involuntarily committed person is moved from his or her initial "hospitalization" placement, pursuant to IOWA CODE § 229.23, to a permanent placement, pursuant to IOWA CODE § 223.14, even though a requirement that the latter placement be made pursuant to the county's single entry point process is not repeated in § 223.14. Nor, they contend, was the part of § 230.1 that permits the county to escape liability for costs of involuntarily committed persons if their placement is not pursuant to the single entry point process intended to permit the county to refuse to designate an appropriate placement, as such an interpretation would potentially burden the state with the refusal of any of the ninety-nine counties in Iowa to designate an appropriate placement. In short, the State Defendants contend that, as a matter of ***940** law, the County has refused to pay for Salcido's placement without legal justification.

The grounds for the County's resistance to the State Defendants' motion for summary judgment on their cross-claim and the County's own motion for summary judgment on that cross-claim are not immediately apparent. The County's motion for summary judgment does not identify the party or parties against whom it is brought and no part of the County's joint brief in resistance to the plaintiff's motion for summary judgment and in support of its own motion for summary judgment clearly addresses the State Defendants' motion for summary judgment on their cross-claim. Nevertheless, it appears that the County argues that it is

simply not responsible for the costs of Salcido's placement at CMHI, because such placement was in violation of its single entry point process plan for mental health services.

2. The County's liability for the costs of Salcido's care

There is no dispute here that Woodbury County is, and was at all relevant times, Salcido's county of legal settlement. As such, the County is liable, in the first instance, for the costs of Salcido's care. *See* IOWA CODE § 230.1 ("The necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid ··· [b]y the county in which such person has a legal settlement, or ··· [b]y the state when such person has no legal settlement in this state, or when such settlement is unknown."). The County's liability for costs is limited by the requirement that placements must be pursuant to the County's single entry point process. The court concluded above, in its analysis of the statutory scheme for placement of involuntarily committed individuals, that although the provisions providing for the immediate custody of the respondent, IOWA CODE § 229.11, and for initial placement after the determination of "serious mental impairment" in the "hospitalization hearing," IOWA CODE § 229.13, were amended in 1996 to require placement of persons whose expenses will be paid by the county to a facility "designated through the single entry point process," no such amendment was made to § 229.14, the provision providing for the ultimate placement of the committed person upon the chief medical officer's recommendation. *See*IOWA CODE § 229.14. Nevertheless, ultimate placement pursuant to § 229.14 is still subject to the requirements of the "single entry point system," by virtue of § 229.1B, which provides that, "[n]otwithstanding any provision of this chapter to the contrary, any person whose hospitalization expenses are payable in whole or in part by a country shall be subject to all requirements of the single entry point process." IOWA CODE § 229.1B; *see also* IOWA CODE § 230.1 ("A county of legal settlement is not liable for costs and expenses associated with a person with mental illness unless the costs and expenses are for services and other support authorized for the person through the single entry point process.").

However, the court also agrees with the State Defendants that nothing about this statutory scheme permits the County to escape responsibility for the costs of care in Salcido's case. This is so, because, as a matter of law, nothing permitted the County to define "mental illness" for purposes of its Plan differently from the statutorily definition of "mental illness" for purposes of involuntary commitment of IOWA CODE § 229.1(7). Moreover, the different definition of "mental illness" on which the County relied for its refusal to fund Salcido's placement at CMHI was in a Plan that had not yet been approved at the time Salcido was originally denied placement. Rather, the Plan last approved by the IDHS, the County's Plan for fiscal 1998 (calendar year 1997-1998), defined as eligible persons those who "[h]ave been found to be seriously mentally impaired and involuntarily court-ordered to receive services." *See* State Defendants' Statement Of Undisputed Facts, Exhibit 5, County Management***941*** Plan Effective July 1, 1996, Sec. F, ¶ 2 (documents page 78). Pursuant to IOWA CODE § 331.439(1)(e), "[c]hanges to the approved plan are submitted at least sixty days prior to the proposed change and are not to be implemented prior to the director of human services' approval." Thus, the County's different definition could not yet have been implemented at the time the County refused to approve Salcido's placement.

Therefore, the court concludes that the State Defendants have established, as a matter of law, that the County was responsible for the costs of Salcido's care and failed or refused to pay those costs without any adequate legal justification. Consequently, the State Defendants are entitled to the relief they seek on their cross-claim as a matter of law, which simply requires the County to bear the costs it was obligated to pay under IOWA CODE § 230.1.

III. CONCLUSION

The court will continue its "thematic" approach in this summary, taking each of Salcido's claims in turn, saving a motion-by-motion treatment for its disposition below. As to Salcido's procedural due process claim, as a matter of law, neither the County nor the State Defendants have provided procedures that, on their face, provide adequate protections for the liberty interest of a person subjected to involuntary commitment. Specifically, Iowa's statutory provisions fail to provide any notice or hearing that addresses the denial by a county, through its single entry point system, of an involuntarily committed person's liberty interest in an appropriate placement. Nor are the additional grievance procedures identified by the County sufficient to overcome the procedural inadequacies of the statutory system. The absence of any notice and hearing procedures on placement necessarily establishes that there is no provision on the face of the procedures for an impartial decision-maker on placement, either. Moreover, as a matter of law, Salcido did not receive adequate procedural protections in his case. Contrary to the State Defendants' assertion, it is precisely at the point where § 229.14 provides inadequate procedural safeguards concerning ultimate placement that the process broke down in this case, so that the flaw in the statutory scheme actually was responsible for the denial of Salcido's due process rights to notice and a hearing on denial of an appropriate placement. Although the adequacy of the procedures applied by the County in Salcido's case turned on whether Salcido received an impartial decision-maker on the County's placement determination, as a matter of law, Salcido did not receive that protection. Rather, under the standards stated in *Ward v. Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), the position of the County Board as partisans and judges concerning County funding of mental health services necessarily involved a lack of due process of law in the consideration of Salcido's appeal of the denial of mental health services. In the alternative, assuming that only a rebuttable presumption of partiality is

established by the circumstances identified in *Ward* and presented here, no reasonable inferences on the impartiality of the Board are presented, where all of the County Board's "objective" reasons for denying Salcido an appropriate placement in July of 1998 suggest only post-hoc, pretextual justifications that undermine, rather than support, any contention that the Board constituted an impartial decision-maker as required by due process. Salcido is therefore entitled to summary judgment on his procedural due process claim against both the County and the State Defendants. Therefore, Salcido is entitled to summary judgment against both the County and the State Defendants to the effect that the defendants violated his due process rights to notice and a hearing before an impartial decision-maker on appropriate placement, both on the face of the pertinent statutory and administrative provisions, and as procedures were actually applied in Salcido's case. This decision leaves for trial only the question of damages against the County on this claim.

***942** However, Salcido's disability discrimination claims under the RA and Title II of the ADA against the State Defendants fare considerably differently. It was unnecessary for the court to address the State Defendants renewed assertion that Eleventh Amendment immunity bars these claims against them, because, assuming that *Ex Parte Young* is applicable, Salcido cannot establish these claims against the State Defendants as a matter of law. Approval of a purportedly "discriminatory" County Plan cannot subject the State Defendants to liability in this case, where that "discriminatory" Plan was not applicable, as a matter of law, to Salcido's exclusion from mental health services while he was subject to involuntary commitment. Nor has Salcido generated a genuine issue of material fact that the State Defendants' refusal to admit him to CMHI was based on anything other than the County's refusal to pay for services. Nothing in the record suggests either that the State Defendants were adopting or ratifying the "discriminatory" aspect of the County's refusal to pay for services or suggests that the State Defendants' stated reason for refusing to admit Salcido was a pretext for conduct actually motivated by disability discrimination. Therefore, the State Defendants are entitled to summary judgment on Salcido's disability discrimination claims against them.

Salcido is entitled to summary judgment, however, on his disability discrimination claims against the County. As a matter of law, Salcido was disabled by his "dementia," and "qualified" for mental health services at County expense by virtue of his involuntary commitment pursuant to IOWA CODE CH. 229 and his legal settlement in the County. Furthermore, in light of *Olmstead v. L.C. by Zimring*, 527 U.S. 581, 598 n. 10, 119 S.Ct. 2176, 144 L.Ed.2d 540 (1999), the County's contention that there has been no discrimination by reason of Salcido's disability, dementia, when all persons with dementia are excluded from services, cannot be sustained. The County's proffered "objective" reasons for its refusal to provide services present no reasonable inferences that the County's decision was non-discriminatory. Therefore, as a matter of law, Salcido has demonstrated all of the elements of his disability discrimination claim against the County. Nor are there any genuine issues of material fact regarding the County's affirmative defense that requiring modification of its Plan to accommodate payment for Salcido's care would not be reasonable, which might preclude summary judgment. The County has failed to point to any record evidence that supports such a defense. In addition or in the alternative, the County's affirmative defense cannot stand in the face of the State's legislative mandate that the County, as the county of legal settlement, must pay the necessary costs in Salcido's case. *See* IOWA CODE § 230.1. Modification of the County's Plan to comply with state law is "reasonable"; it is refusal to do so that is not reasonable.

Finally, there are no genuine issues of material fact precluding summary judgment in favor of the State Defendants on their cross-claim against the County for payment for Salcido's care. The State Defendants have established, as a matter of law, that the County was responsible for the costs of Salcido's care and failed or refused to pay those costs without any adequate legal justification.

THEREFORE,

1. Salcido's July 19, 2000, motion for summary judgment is **granted in part and denied in part,** as follows:

a. Summary judgment in favor of Salcido on his procedural due process claim is **granted** to the extent that **the court concludes and declares** that the County and State Defendants have violated Salcido's rights to procedural due process by denying him notice and a hearing before an impartial decision-maker on appropriate placement, both on the face of the pertinent statutory and administrative provisions, and as procedures were actually applied in Salcido's case, and the **defendants are hereby enjoined** to remedy their procedures***943** as those procedures have been found inadequate herein. This decision leaves for trial only the question of damages against the County on this procedural due process claim.

b. Summary judgment in favor of Salcido and against the State Defendants on Salcido's disability discrimination claims pursuant to the RA and Title II of the ADA is **denied.**

c. Summary judgment in favor of Salcido and against the County on Salcido's disability discrimination claims pursuant to the RA and Title II of the ADA is **granted** to the extent that **the court concludes and declares** that the County has discriminated against Salcido by reason of his disability in the provision of mental health services upon his involuntary commitment pursuant to IOWA CODE CH. 229, and **the County is hereby enjoined** to provide Salcido with funding for his placement at CMHI. This decision leaves for trial only the question of damages against the County on Salcido's disability discrimination claims.

2. The County's August 11, 2000, motion for summary judgment against Salcido and the State Defendants is **denied in its entirety.**

3. The State Defendants' August 14, 2000, motion for summary judgment against plaintiff Salcido is **denied,** as to Salcido's procedural due process claim, and **granted** as to Salcido's disability discrimination claims. Salcido has abandoned his substantive due process claim against the State Defendants and that claim is hereby **dismissed.**

4. The State Defendants' August 14, 2000, motion for summary judgment against the County on the State Defendants' cross-claim is **granted. The court concludes**

and declares, as follows:
a. The County was responsible for designating an appropriate facility to which the hospital referee could commit Salcido on July 15, 1998, when Salcido did not require care at Marian Health Center
b. The County is responsible for the costs of Salcido's care at all times from the time that the referee determined that he was seriously mentally impaired and required commitment to a facility appropriate to his needs, including all costs expended by CMHI for the care and treatment of Salcido since his admission to the facility, and the County must pay such costs to defendant Rasmussen for the benefit of CMHI, as directed by IOWA CODE CH. 230.
5. This matter shall proceed to trial on Salcido's equal protection and substantive due process claims against the County and on damages on Salcido's procedural due process, ADA, and RA claims against the County.
IT IS SO ORDERED.

N.D.Iowa,2000.
Salcido ex rel. Gilliland v. Woodbury County, Iowa
119 F.Supp.2d 900

END OF DOCUMENT

Exhibit 5

Ward v. Village of Monroeville, Ohio
409 U.S. 57, 93 S.Ct. 80
U.S.Ohio 1972.
November 14, 1972

409 U.S. 57, 93 S.Ct. 80, 61 O.O.2d 292, 34 L.Ed.2d 267

Supreme Court of the United States
Clarence WARD, Petitioner,
v.
VILLAGE OF MONROEVILLE, OHIO.
No. 71-496.
Argued Oct. 17, 1972.
Decided Nov. 14, 1972.

Defendant was convicted in Mayor's Court of the Village of Monroeville of two traffic offenses, and the Court of Common Pless affirmed. The Court of Appeals for Heron County, 21 Ohio App.2d 17, 254 N.E.2d 375, affirmed, and motion to certify record was allowed. The Supreme Court, 27 Ohio St.2d 179, 271 N.E.2d 757, affirmed, and certiorari was granted. The Supreme Court, Mr. Justice Brennan, held that where mayor before whom petitioner was compelled to stand trial for traffic offenses was responsible for village finances, and mayor's court through fines, forfeitures, costs and fees, provided a substantial portion of the village funds, **petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the due process clause.**
Reversed and remanded.
Mr. Justice White, joined by Mr. Justice Rehnquist, filed dissenting opinion.

West Headnotes

[1] KeyCite Notes

92 Constitutional Law
92XII Due Process of Law
92k256 Criminal Prosecutions
92k268 Trial
92k268(2) Particular Cases and Problems
92k268(8) k. Qualifications, Actions, and Comments of Judge, Jury, or Prosecutor. Most Cited Cases
(Formerly 92k268(2))

Where mayor before whom petitioner was compelled to stand trial for traffic offenses was responsible for village finances, and mayor's court through fines, forfeitures, costs and fees, provided a substantial portion of the village funds, petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the due process clause. R.C.Ohio §§ 733.40, 737.15, 1905.01 et seq.; U.S.C.A.Const. Amend. 14.

[2] KeyCite Notes

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(A) Municipal Officers in General
268k137 Eligibility
268k142 k. Holding Other Office or Employment. Most Cited Cases

Statutory provision for disqualification of interested or biased judges did not afford petitioner, convicted of traffic offenses in mayor's court, a sufficient safeguard of right to trial before a disinterested and impartial judicial officer as opposed to judge who was responsible for village finances and whose court, through fines, forfeitures, costs and fees, provided a substantial portion of village funds. R.C.Ohio § 2937.20; U.S.C.A.Const. Amend. 14.

[3] KeyCite Notes

170B Federal Courts
170BVII Supreme Court
170BVII(E) Review of Decisions of State Courts
170Bk508 k. Time and Manner of Raising Federal Question in State Court. Most Cited Cases

Where the Ohio Supreme Court passed upon petitioner's constitutional contention that mayor's participation in the adjudication and punishment of petitioner in a litigated case violated due process since mayor was responsible for village finances and fines supplied large part of village funds, petitioner could be heard in the United States Supreme Court to urge that the Ohio Supreme Court erred in rejecting claim, even if petitioner had failed to invoke Ohio procedure for disqualification of interested, biased or prejudiced judges. R.C.Ohio § 2937.20; U.S.C.A.Const. Amend. 14.

[4] KeyCite Notes

268 Municipal Corporations
268X Police Power and Regulations
268X(B) Violation and Enforcement of Regulations

268k634 Criminal Prosecutions
268k641 k. Trial, Judgment, and Record. Most Cited Cases

Petitioner charged with traffic offenses was entitled to a neutral and detached judge in the mayor's court even if a de novo trial was available in the county court of common pleas. R.C.Ohio § 1905.01 et seq.; U.S.C.A.Const. Amend. 14.

***81 *57** Syllabus[FN*]
FN* The syllabus constitutes no part of the opinion of the Court bu has been prepared by the Reporter of Decision for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment where he was compelled to stand trial for traffic offenses before the mayor, who was responsible for village finances and whose court through fines, forfeitures, costs, and fees provided a substantial portion of village funds. Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749. A statutory provision for the disqualification of interested or biased judges did not afford petitioner a sufficient safeguard, and it is of no constitutional relevance that petitioner could later be tried de novo in another court, as he was entitled to an impartial judge in the first instance. Pp. 82-84, 27 Ohio St.2d 179, 271 N.E.2d 757, reversed and remanded.

Bernard A. Berkman, Cleveland, Ohio, for petitioner.
Franklin D. Eckstein, Willard, Ohio, for respondent.

***82** Mr. Justice BRENNAN delivered the opinion of the Court.
Pursuant to Ohio Rev.Code Ann. s 1905.01 et seq. (1968), which authorizes mayors to sit as judges in cases of ordinance violations and certain traffic offenses, the Mayor of Monroeville, Ohio, convicted petitioner of two traffic offenses and fined him $50 on each. The Ohio Court of Appeals for Huron County, ***58** 21 Ohio App.2d 17, 254 N.E.2d 375 (1969), and the Ohio Supreme Court, 27 Hoio St.2d 179, 271 N.Ed.2d 757 (1971), three justices dissenting, sustained the conviction, rejecting petitioner's objection that trial before a mayor who also had responsibilities for revenue production and law enforcement denied him a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment. We granted certiorari. 404 U.S. 1058, 92 S.Ct. 735, 30 L.Ed.2d 745 (1972).
The Mayor of Monroeville has wide executive powers and is the chief conservator of the peace. He is president of the village council, presides at all meetings, votes in case of a tie, accounts annually to the council respecting village finances, fills vacancies in village offices and has general overall supervision of village affairs. A major part of village income is derived from the fines, forfeitures, costs, and fees imposed by him in his mayor's court. Thus, in 1964 this income contributed $23,589.50 of total village revenues of $46,355.38; in 1965 it was $18,508.95 of $46,752.60; in 1966 it was $16,085 of $43,585.13; in 1967 it was $20,060.65 of $53,931.43; and in 1968 it was $23,439.42 of $52,995.95. This revenue was of such importance to the village that when legislation threatened its loss, the village retained a management consultant for advice upon the problem.[FN1]
FN1. Ordinance No. 59-9:

'WHEREAS, the legislation known as the County Court law passed by the 102nd General Assembly greatly reduces the jurisdictional powers of Mayor Courts as of January 1, 1960; and

'WHEREAS, such restrictions may place such a hardship upon law enforcement personnel in this village and surrounding areas as to endanger the health, welfare and safety of persons residing or being in our village; and

'WHEREAS, other such provisions of this legislation may cause such a reduction in revenue to this village that an additional burden may result from increased taxation and/or curtailment of services essential to the health, welfare and safety of this village; . . .

'BE IT ORDAINED BY THE VILLAGE OF (MONROEVILLE) OHIO:

Section 1. That the services of the management consulting firm of Midwest Consultants, Incorporated of Sandusky, Ohio, be employed to conduct a survey and study to ascertain the extent of the effects of the County Court Law on law enforcement and loss of revenue in and to

the Village of (Monroeville), Ohio, so that said Village can prepare for the future operations of the Village to safeguard the heath (sic), welfare and safety of its citizens . . ..'

Moreover, Monroeville's Chief of Police, appointed by the Mayor, Ohio Rev.Code Ann. s 737.15 (Supp.1971), testified that it was his regular practice to charge suspects under a village ordinance, rather than a state statute, whenever a choice existed. App. 9. That policy must be viewed in light of s 733.40 (1954), which provides that fines and forfeitures collected by the Mayor in state cases shall be paid to the county treasury, whereas fines and forfeitures collected in ordinance and traffic cases shall be paid into the municipal treasury. Petitioner asserts that the Mayor conceded at trial that this policy was carried out under the Mayor's orders. The record lends itself to this inference. App. 10-11.

***59** [1] Conceding that 'the revenue produced from a mayor's court provides a substantial portion of a municipality's funds,' the Supreme Court of Ohio held nonetheless that 'such fact does not mean that a mayor's impartiality is so diminished thereby that he cannot act in a disinterested fashion in a judicial capacity.' 27 Ohio St.2d, at 185, 271 N.E.2d, at 761. We disagree with that conclusion.

The issue turns, as the Ohio court acknowledged, on whether the Mayor can be regarded as an impartial judge under the principles laid down by this Court in ***83** Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927). There, convictions for prohibition law violations rendered by the Mayor of North College Hill, Ohio, were reversed when it appeared that, in addition to his regular salary, the Mayor received ***60** $696.35 from the fees and costs levied by him against alleged violators. This Court held that 'it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of dur process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case.' Id., at 523, 47 S.Ct., at 441.

The fact that the mayor there shared directly in the fees and costs did not define the limits of the principle. Although 'the mere union of the executive power and the judicial power in him cannot be said to violate due process of law,' id., at 534, 47 S.Ct., at 445 the test is whether the mayor's situation is one 'which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused . . ..' Id., at 532, 47 S.Ct., at 444. **Plainly that 'possible temptation' may also exist when the mayor's executive responsibilites for village finances may make him partisan to maintain the high level of contribution from the mayor's court. This, too, is a 'situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, (and) necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him.'** Id., at 534, 47 S.Ct., at 445.

This situation is wholly unlike that in Dugan v. Ohio, 277 U.S. 61, 48 S.Ct. 439, 72 L.Ed. 784 (1928), which the Ohio Supreme Court deemed controlling here. There the Mayor of Xenia, Ohio, had judicial functions but only very limited executive authority. The city was governed by a commission of five members, including the Mayor, which exercised all legislative powers. A city manager, together with the commission, exercised all executive powers. In those circumstances, this Court held that the Mayor's relationship ***61** to the finances and financial policy of the city was too remote to warrant a presumption of bias toward conviction in prosecutions before him as judge.

[2] [3] Respondent urges that Ohio's statutory provision, Ohio Rev.Code Ann. s 2937.20 (Supp.1971), for the disqualification of interested, biased, or prejudiced judges is a sufficient safeguard to protect petitioner's rights. This argument is not persuasive. First, it is highly dubious that this provision was available to raise petitioner's broad challenge to the mayor's court of this village in respect to all prosecutions there in which fines may be imposed. The provision is apparently designed only for objection to a particular mayor 'in a specific case where the circumstances in that municipality might warrant a finding of prejudice in that case.' 27 Ohio St.2d, at 184, 271 N.E.2d, at 760 (emphasis added). If this means that an accused must show special prejudicie in his particular case, the statute requires too much and protects too little. But even if petitioner might have utilized the procedure to make his objection, the Ohio Supreme Court passed upon his constitutional contention despite petitioner's failure to invoke the procedure. In that circumstances, see Raley v. Ohio, 360 U.S. 423,

436, 79 S.Ct. 1257, 1265, 3 L.Ed.2d 1344 (1959), he may be heard in this Court to urge that the Ohio Supreme Court erred in holding that he had not established his Fourteenth Amendment claim.
[4] Respondent also argues that any unfairness at the trial level can be corrected on appeal and trial de novo in the County Court of Common Pleas. We disagree. This 'procedural safeguard' does not guarantee a fair trial in the mayor's ***84** court; there is nothing to suggest that the incentive to convict would be diminished by the possibility of reversal on appeal. Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled*62 to a neutral and detached judge in the first instance. [FN2] Accordingly, the judgment of the Supreme Court of Ohio is reversed and the case is remanded for further proceedings not inconsistent with this opinion.
FN2. The question presented on this record is the constitutionality of the Mayor's participation in the adjudication and punishment of a defendant in a litigated case where he elects to contest the charges against him. We intimate no view that it would be unconstitutional to permit a mayor or similar official to serve in essentially a ministerial capacity in a traffic or ordinance violation case to accept a free and voluntary plea of guilty or nolo contendere, a forfeiture of collateral, or the like.

It is so ordered.
Reversed and remanded.

Mr. Justice WHITE, with whom Mr. Justice REHNQUIST joins, dissenting.

The Ohio mayor who judged this case had no direct financial stake in its outcome. Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927), is therefore not controlling, and I would not extend it.
To justify striking down the Ohio system on its face, the Court must assume either that every mayor-judge in every case will disregard his oath and administer justice contrary to constitutional commands or that this will happen often enough to warrant the prophylactic, per se rule urged by petitioner. I can make neither assumption with respect to Ohio mayors nor with respect to similar officials in 16 other States. Hence, I would leave the due process matter to be decided on a case-by-case basis, a question which, as I understand the posture of this case, is not now before us. I would affirm the judgment.

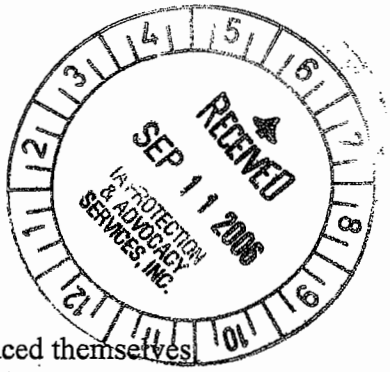
Ward v. Village of Monroeville, Ohio
409 U.S. 57, 93 S.Ct. 80, 61 O.O.2d 292, 34 L.Ed.2d 267

Briefs and Other Related Documents (Back to top)

- 1972 WL 136240 (Appellate Brief) Brief for Respondent (Apr. 07, 1972)
- 1972 WL 136239 (Appellate Brief) Brief for Petitioner. (Mar. 08, 1972)

END OF DOCUMENT

Exhibit 6



Stakeholders Meeting
September 5, 2006
6:00 pm

Dawn started the meeting with introductions. The attendees introduced themselves. Dawn then introduced Robyn Wilson of Department of Human Services.

Robyn gave a power point presentation on County MHDD funding. She discussed the historical review of MHDD, what mandated and non-mandated services are and what counties will be forced to do to balance their budgets. There was also discussion on what is happening in other counties in Iowa as well as other states.

Questions were asked by the audience and answered by Robyn.

Dawn asked for volunteers for the appeals and waiting list boards. It was explained that only a few people would be asked to sit for each hearing so several people would be needed to sit on the boards from each county. Discussion was held on who would be appropriate and how to handle individuals whom had a conflict of interest. Dawn explained that the process would be explained and covered in the management plan. Dawn stated that she wanted one supervisor from each county to sit on the board as a non-voting member.

The following volunteered for the board: Belinda Mikkelson, Rita Burley, Shawna Kalous, Judy Winkelman, Maxine Bettin, Kris Gunderson, Mr. and Mrs. Sersland.

A copy of the management plan was requested. Dawn offered to provide a copy and also mentioned that copies were located at provider agencies. Someone asked when the last plan was made and why hadn't it been updated in that time. Dawn pointed out that it did not need to be updated on any regular basis, only as needed.

Dawn talked about the encumberment document and would have further discussion on it at the next meeting. It is planned to have this document to explain how each county budget is spent per individual receiving services. This document will only provide numbers and dollar amounts all other information will be re-identified.

Dawn asked if there was any interest in having the CPC from Wright County come speak at the next Stakeholders meeting. Wright County has implemented changes to help the county dollar spread further. We will ask for Wright County to present at the next meeting.

There was not a lot of discussion about future topics and meetings.

Next meeting will be held on December 5, 2006 at 6:00 at the Sac County Support Services office in Sac City.

Exhibit 7

IOWA ADMINISTRATIVE CODE **441 — CHAPTER 25**
DISABILITY SERVICES MANAGEMENT
PREAMBLE

This chapter provides for reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injury.

DIVISION II
COUNTY MANAGEMENT PLAN
PREAMBLE

These rules define the standards for county management plans for mental health, mental retardation, and developmental disability services, including the single point of entry process for accessing services and supports paid from the county mental health, mental retardation, and developmental disability services fund (Iowa Code section 331.424A). Each county must complete a plan in order to meet the requirements of Iowa Code section 331.439. The single point of entry process is hereinafter called the central point of coordination (CPC). The CPC is an administrative gatekeeper to the service's fund and is not meant to replace case management or service coordination. The county management plan describes how persons with disabilities receive appropriate services and supports within the financial limitations of federal, state, and county resources. In partnership with the state, the county develops a management plan that describes the capacities of the county to manage the county mental health, mental retardation, and developmental disability services fund in a manner that is cost–efficient. These rules are designed to give counties maximum flexibility to manage the public mental health and developmental disabilities (MH/DD) system themselves or, if a county so chooses, to contract with a private managed care company to manage all or part of the county's system. However, even when a county contracts with a private entity to manage its system, the county must approve the county management plan in which it defines the parameters of consumer eligibility and service criteria to be used by the contractor. The county management plan shall be guided by the following principles: choice, empowerment, and community.

441—25.13(331) Policies and procedures manual. The policies and procedures manual shall describe system management and plan administration.

25.13(1) *System management section.* The system management section of the manual shall describe, but shall not be limited to, the following:

f. Conflict of interest policy. The manual shall describe a conflict of interest policy that shall, at a minimum, ensure that service authorization decisions are either made by individuals or organizations which have no financial interest in the services or supports to be provided, or that such interest is fully disclosed to consumers, counties, and other stakeholders. The process for this disclosure shall be described in the manual.

Exhibit 8

IOWA ADMINISTRATIVE CODE **441 — CHAPTER 25**
DISABILITY SERVICES MANAGEMENT
PREAMBLE

This chapter provides for reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injury.

DIVISION II
COUNTY MANAGEMENT PLAN
PREAMBLE

These rules define the standards for county management plans for mental health, mental retardation, and developmental disability services, including the single point of entry process for accessing services and supports paid from the county mental health, mental retardation, and developmental disability services fund (Iowa Code section 331.424A). Each county must complete a plan in order to meet the requirements of Iowa Code section 331.439. The single point of entry process is hereinafter called the central point of coordination (CPC). The CPC is an administrative gatekeeper to the service's fund and is not meant to replace case management or service coordination. The county management plan describes how persons with disabilities receive appropriate services and supports within the financial limitations of federal, state, and county resources. In partnership with the state, the county develops a management plan that describes the capacities of the county to manage the county mental health, mental retardation, and developmental disability services fund in a manner that is cost–efficient. These rules are designed to give counties maximum flexibility to manage the public mental health and developmental disabilities (MH/DD) system themselves or, if a county so chooses, to contract with a private managed care company to manage all or part of the county's system. However, even when a county contracts with a private entity to manage its system, the county must approve the county management plan in which it defines the parameters of consumer eligibility and service criteria to be used by the contractor. The county management plan shall be guided by the following principles: choice, empowerment, and community.

441—25.13(331) Policies and procedures manual. The policies and procedures manual shall describe system management and plan administration.

25.13(2) *Plan administration section.* The plan administration section of the policies and procedures manual shall specifically outline procedures for administering the plan at the consumer level. These procedures shall include, but shall not be limited to:

c. Notice of decision. The review process shall ensure a prompt screening for eligibility and initial decision to approve or reject the application or to gather more information. A written notice of decision which explains the action taken on the application and the reasons for that action shall be sent to the applicant or authorized representative or, in the case of minors, the family or the applicant's authorized representative. The time frame for sending a written notice of decision shall be included. If the consumer is placed on a waiting list for funding, the notice of decision shall include an estimate of how long the consumer is expected to be on the waiting list and the process for the consumer or authorized representative to obtain information regarding the consumer's status on the waiting list. The notice of decision shall outline the applicant's right to appeal and include a description of the appeal process.

Exhibit 9

Iowa Code § 331.439(1)(b)(1)-(3) (2005)

County Home Rule Implementation

Part 5
Duties and Powers of the Board Relating to County Services
Division IV – Powers and Duties of the Board Relating to County Finances
Part 2 – County Levies, Funds, Budgets, and Expenditures

331.439 Eligibility for state payment.

1. The state payment to eligible counties under this section shall be made as provided in sections 331.438 and 426B.2 . A county is eligible for the state payment, as defined in section 331.438 , for a fiscal year if the director of human services, in consultation with the state commission, determines for a specific fiscal year that all of the following conditions are met:

a. The county accurately reported by December 1 the county's expenditures for mental health, mental retardation, and developmental disabilities services for the previous fiscal year on forms prescribed by the department of human services.

b. The county developed and implemented a county management plan for the county's mental health, mental retardation, and developmental disabilities services in accordance with the provisions of this paragraph *"b"*. The plan shall comply with the administrative rules adopted for this purpose by the state commission and is subject to the approval of the director of human services in consultation with the state commission. The plan shall include a description of the county's service management provision for mental health, mental retardation, and developmental disabilities services. For mental retardation and developmental disabilities service management, the plan shall describe the county's development and implementation of a managed system of cost-effective individualized services and shall comply with the provisions of paragraph *"d"*. The goal of this part of the plan shall be to assist the individuals served to be as independent, productive, and integrated into the community as possible. The service management provisions for mental health shall comply with the provisions of paragraph *"c"*. A county is subject to all of the following provisions in regard to the county's management plan and planning process:

(1) The county shall have in effect an approved policies and procedures manual for the county's services fund. The county management plan shall be defined in the manual. The manual submitted by the county as part of the county's management plan for the fiscal year beginning July 1, 2000, as approved by the director of human services, shall remain in effect, subject to amendment. An amendment to the manual shall be submitted to the department of human services at least forty-five days prior to the date of implementation. Prior to implementation of any amendment to the manual, the amendment must be approved by the director of human services in consultation with the state commission.

(2) For informational purposes, the county shall submit a management plan review to the department of human services by April 1 of each year. The annual review shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by a managed care entity on behalf of the county.

(3) For informational purposes, every three years the county shall submit to the department of human services a three-year strategic plan. The strategic plan shall describe how the county will proceed to attain the goals and objectives contained in the strategic plan for the duration of the plan. The three-year strategic plan shall be submitted by April 1, 2000, and by April 1 of every third year thereafter.

Exhibit 10

Iowa Code § 17A.2(1) (2005)

Iowa Administrative Procedure Act

17A.2 DEFINITIONS.

As used in this chapter:

1. "Agency" means each board, commission, department, officer or other administrative office or unit of the state. "Agency" does not mean the general assembly, the judicial branch or any of its components, the office of consumer advocate, the governor, or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency.

Exhibit 11

Iowa Rules of Civil Procedure

DIVISION XIV

CERTIORARI

Rule 1.1401. When writ may issue.

A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally.

Renumbered from Rule 306 and amended Nov. 9, 2001, eff. Feb. 15, 2002.

Exhibit 12

IOWA ADMINISTRATIVE CODE **441 — CHAPTER 25**
DISABILITY SERVICES MANAGEMENT
PREAMBLE

This chapter provides for reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injury.

DIVISION II
COUNTY MANAGEMENT PLAN
PREAMBLE

These rules define the standards for county management plans for mental health, mental retardation, and developmental disability services, including the single point of entry process for accessing services and supports paid from the county mental health, mental retardation, and developmental disability services fund (Iowa Code section 331.424A). Each county must complete a plan in order to meet the requirements of Iowa Code section 331.439. The single point of entry process is hereinafter called the central point of coordination (CPC). The CPC is an administrative gatekeeper to the service's fund and is not meant to replace case management or service coordination. The county management plan describes how persons with disabilities receive appropriate services and supports within the financial limitations of federal, state, and county resources. In partnership with the state, the county develops a management plan that describes the capacities of the county to manage the county mental health, mental retardation, and developmental disability services fund in a manner that is cost–efficient. These rules are designed to give counties maximum flexibility to manage the public mental health and developmental disabilities (MH/DD) system themselves or, if a county so chooses, to contract with a private managed care company to manage all or part of the county's system. However, even when a county contracts with a private entity to manage its system, the county must approve the county management plan in which it defines the parameters of consumer eligibility and service criteria to be used by the contractor. The county management plan shall be guided by the following principles: choice, empowerment, and community.

441—25.13(331) Policies and procedures manual. The policies and procedures manual shall describe system management and plan administration.

25.13(2) *Plan administration section.* The plan administration section of the policies and procedures manual shall specifically outline procedures for administering the plan at the consumer level. These procedures shall include, but shall not be limited to:

j. Appeals. The county shall develop and implement a process for appealing the decisions of the county or its agent. This appeal process shall be based on objective criteria, specify time frames, provide for notification in accessible formats of the decisions to all parties, and provide some assistance to consumers in using the process. Responsibility for the final administrative decision on an appeal shall not rest with the county board of supervisors. If the appellant has state case status, responsibility for the final administrative decision on an appeal shall rest with the department, following the procedures established in 441—Chapter 7.

Exhibit 13

IOWA CODE § 222.60 (2005)

Persons With Mental Retardation

222.60 Costs paid by county or state - diagnosis and evaluation.

All necessary and legal expenses for the cost of admission or commitment or for the treatment, training, instruction, care, habilitation, support and transportation of persons with mental retardation, as provided for in the county management plan provisions implemented pursuant to section 331.439 , subsection 1, in a state resource center, or in a special unit, or any public or private facility within or without the state, approved by the director of the department of human services, shall be paid by either:

1. The county in which such person has legal settlement as defined in section 252.16.
2. The state when such person has no legal settlement or when such settlement is unknown.

Prior to a county of legal settlement approving the payment of expenses for a person under this section, the county may require that the person be diagnosed to determine if the person has mental retardation or that the person be evaluated to determine the appropriate level of services required to meet the person's needs relating to mental retardation. The diagnosis and the evaluation may be performed concurrently and shall be performed by an individual or individuals approved by the county who are qualified to perform the diagnosis or the evaluation. Following the initial approval for payment of expenses, the county of legal settlement may require that an evaluation be performed at reasonable time periods. The cost of a county-required diagnosis and an evaluation is at the county's expense. In the case of a person without legal settlement or whose legal settlement is unknown, the state may apply the diagnosis and evaluation provisions of this paragraph at the state's expense. A diagnosis or an evaluation under this section may be part of a county's central point of coordination process under section 331.440 , provided that a diagnosis is performed only by an individual qualified as provided in this section.

A diagnosis of mental retardation under this section shall be made only when the onset of the person's condition was prior to the age of eighteen years and shall be based on an assessment of the person's intellectual functioning and level of adaptive skills. The diagnosis shall be made by an individual who is a psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills.

A diagnosis of mental retardation shall be made in accordance with the criteria provided in the diagnostic and statistical manual of mental disorders, fourth edition, published by the American psychiatric association.

Exhibit 14

IOWA ADMINISTRATIVE CODE **441 — CHAPTER 7**
APPEALS AND HEARINGS
PREAMBLE

This chapter applies to contested case proceedings conducted by or on behalf of the department.

441—7.1(17A) Definitions.

"Reconsideration" means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through the Iowa Foundation for Medical Care, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, Medicaid patient management services, the managed health care review committee, a division or bureau within the department, the mental health and developmental disabilities commission, or a licensed health care professional as specified in 441—paragraph 9.9(1)*"i."* Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

Exhibit 15

IOWA ADMINISTRATIVE CODE **441 — CHAPTER 7**
APPEALS AND HEARINGS
PREAMBLE

This chapter applies to contested case proceedings conducted by or on behalf of the department.

441—7.5(17A) The right to appeal. Any person or group of persons may file an appeal with the department concerning any issue. The department shall determine whether a hearing shall be granted.

7.5(2) *When a hearing is not granted.* A hearing shall not be granted when:

d. The appeal is filed prematurely as:

(1) There is no adverse action by the department, or

(2) The appellant has not exhausted the reconsideration process.

Exhibit 16

IOWA ADMINISTRATIVE CODE **441 — CHAPTER 83**
MEDICAID WAIVER SERVICES
PREAMBLE

Medicaid waiver services are services provided to maintain persons in their own homes or communities who would otherwise require care in medical institutions. Provision of these services must be cost–effective. Services are limited to certain targeted client groups for whom a federal waiver has been requested and approved. Services provided through the waivers are not available to other Medicaid recipients as the services are beyond the scope of the Medicaid state plan.

DIVISION I—HCBS ILL AND HANDICAPPED WAIVER SERVICES

83.2(2) *Need for services.*

a. The consumer shall have a service plan approved by the department which is developed by the service worker identified by the county of residence. This service plan must be completed prior to services provision and annually thereafter.

The service worker shall establish the interdisciplinary team for the consumer and, with the team, identify the consumer's need for service based on the consumer's needs and desires as well as the availability and appropriateness of services using the following criteria:

(1) This service plan shall be based, in part, on information in the completed Home– and Community–Based Services Assessment or Reassessment, Form 470–0659. Form 470–0659 is completed annually, or more frequently upon request or when there are changes in the consumer's condition. The service worker shall have a face–to–face visit with the consumer at least annually.

(2) Service plans for persons aged 20 or under shall be developed to reflect use of all appropriate nonwaiver Medicaid services and so as not to replace or duplicate those services. The service worker shall list all nonwaiver Medicaid services in the service plan.

(3) Service plans for persons aged 20 or under that include home health or nursing services shall not be approved until a home health agency has made a request to cover the consumer's service needs through nonwaiver Medicaid services.

b. Except as provided below, the total monthly cost of the ill and handicapped waiver services shall not exceed the established aggregate monthly cost for level of care as follows:

Skilled level of care	Nursing level of care	ICF/MR
$2,480	$852	$3,019

(1) For consumers eligible for SSI who remain eligible for ill and handicapped waiver services until the age of 25 because they are receiving ill and handicapped waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the consumer would be eligible under 441—subrule 78.9(10) if still under 21 years of age.

(2) If more than $500 is paid for home and vehicle modification services, the service worker shall encumber up to $500 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12–month period.

c. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12–month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2)*"b"*(5).

3. Documentation of job search contacts shall be furnished to the department service worker or targeted case manager.

DIVISION II—HCBS ELDERLY WAIVER SERVICES

83.22(2) *Need for services.*

a. Applicants for elderly waiver services shall have an assessment of the need for service and the availability and appropriateness of service. The tool used to complete the assessment shall be the assessment tool designated by the senior living coordinating unit established at Iowa Code section 231.58. The assessment shall be completed by the designated case management project for the frail elderly in the community or the local service worker. The IME medical services unit shall be responsible for determining the level of care based on the completed assessment tool and supporting documentation as needed.

DIVISION III—HCBS AIDS/HIV WAIVER SERVICES

83.42(2) *Need for services.*

a. The county social worker shall perform an assessment of the person's need for waiver services and determine the availability and appropriateness of services. This assessment shall be based, in part, on information in the completed Home– and Community–Based Services Assessment or Reassessment, Form 470–0659. Form 470–0659 shall be completed annually.

DIVISION IV—HCBS MR WAIVER SERVICES

83.61(2) *Need for services.*

a. Consumers currently receiving Medicaid case management or services of a department–qualified mental retardation professional (QMRP) shall have the applicable coordinating staff and other interdisciplinary team members complete the Functional Assessment Tool, Form 470–3073, and identify the consumer's needs and desires as well as the availability and appropriateness of the services.

b. Consumers not receiving services as set forth in paragraph *"a"* who are applying for the HCBS MR waiver service shall have a department service worker or a case manager paid by the county without Medicaid funds complete the Functional Assessment Tool, Form 470–3073, for the initial level of care determination; establish an initial interdisciplinary team for HCBS MR services; and, with the initial interdisciplinary team, identify the consumer's needs and desires as well as the availability and appropriateness of services.

c. Persons meeting other eligibility criteria who do not have a Medicaid case manager shall be referred to a Medicaid case manager.

d. Services shall not exceed the number of maximum units established for each service.

e. The cost of services shall not exceed unit expense maximums. Requests shall only be reviewed for funding needs exceeding the supported community living service unit cost maximum. Requests require special review by the department and may be denied as not cost–effective.

f. The service worker, department QMRP, or Medicaid case manager shall complete the Functional Assessment Tool, Form 470–3073, for the initial level of care determination within 30 days from the date of the HCBS application unless the worker can document difficulty in locating information necessary for completion of Form 470–3073 or other circumstances beyond the worker's control.

g. At initial enrollment the service worker, department QMRP, case manager paid by the county without Medicaid funds, or Medicaid case manager shall establish an HCBS MR interdisciplinary team for each consumer and, with the team, identify the consumer's need for service based on the consumer's needs and desires as well as the availability and appropriateness of services. The Medicaid case manager shall complete an annual review thereafter. The following criteria shall be used for the initial and ongoing assessments:

(1) The assessment shall be based, in part, on information on the completed Functional Assessment Tool, Form 470–3073.

(2) Service plans must be developed or reviewed to reflect use of all appropriate nonwaiver Medicaid services so as not to replace or duplicate those services.

(3) Rescinded IAB 3/7/01, effective 5/1/01.

(4) Service plans for consumers aged 20 or under which include supported community living services beyond intermittent shall be approved (signed and dated) by the designee of the bureau of long–term care or the designee of the county board of supervisors. The service worker, department QMRP, or Medicaid case manager shall attach a written request for a variance from the maximum for intermittent supported community living with a summary of services and service costs. The written request for the variance shall provide a rationale for requesting supported community living beyond intermittent. The rationale shall contain sufficient information for the designee to make a decision regarding the need for supported community living beyond intermittent.

h. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12–month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2) *"b"*(5).

Division V—Brain Injury Waiver Services

83.82(2) *Need for services.*

a. The consumer shall have a service plan approved by the department that is developed by the certified case manager for this waiver as identified by the county of residence. This must be completed prior to services provision and annually thereafter.

The case manager shall establish the interdisciplinary team for the consumer and, with the team, identify the consumer's "need for service" based on the consumer's needs and desires as well as the availability and appropriateness of services using the following criteria:

(1) The assessment shall be based, in part, on information provided to the IME medical services unit.

(2) Service plans must be developed to reflect use of all appropriate nonwaiver Medicaid state services so as not to replace or duplicate those services.

(3) Service plans for consumers aged 20 or under which include supported community living services beyond intermittent shall not be approved until a home health provider has made a request to cover the service through all nonwaiver Medicaid services.

(4) Service plans for consumers aged 20 or under which include supported community living services beyond intermittent must be approved (signed and dated) by the designee of the bureau of long–term care. The Medicaid case manager must request in writing more than intermittent supported community living with a summary of services and service costs, and submit a written justification with the service plan. The rationale must contain sufficient information for the bureau's designee, or for a consumer at the ICF/MR level of care, the designee of the county of legal settlement's board of supervisors, to make a decision regarding the need for supported community living beyond intermittent.

b. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

DIVISION VI—PHYSICAL DISABILITY WAIVER SERVICES

83.102(2) *Need for services.*

a. The consumer shall have a service plan which is developed by the consumer and a department service worker. This must be completed and approved prior to service provision and at least annually thereafter.

The service worker shall identify the need for service based on the needs of the consumer as well as the availability and appropriateness of services.

DIVISION VII—HCBS CHILDREN'S MENTAL HEALTH WAIVER SERVICES

83.122(6) *Need for service.* The consumer must have service needs that can be met under the children's mental health waiver program, as documented in the service plan developed in accordance with rule 441—83.12(249A).

a. The consumer must be a recipient of targeted case management services or be identified to receive targeted case management services immediately following program enrollment.

b. The total cost of children's mental health waiver services needed to meet the consumer's needs may not exceed $1765 per month.

c. At a minimum, each consumer must receive one billable unit of a children's mental health waiver service per calendar quarter.

d. A consumer may not receive children's mental health waiver services and any of the following services at the same time:

(1) Rehabilitative treatment services under 441—Chapter 185; or

(2) Family foster care under 441—Chapter 202.

e. A consumer may be enrolled in only one HCBS waiver program at a time.

Exhibit 17

IOWA ADMINISTRATIVE CODE **441 — CHAPTER 83**
MEDICAID WAIVER SERVICES
PREAMBLE

Medicaid waiver services are services provided to maintain persons in their own homes or communities who would otherwise require care in medical institutions. Provision of these services must be cost–effective. Services are limited to certain targeted client groups for whom a federal waiver has been requested and approved. Services provided through the waivers are not available to other Medicaid recipients as the services are beyond the scope of the Medicaid state plan.

DIVISION I—HCBS ILL AND HANDICAPPED WAIVER SERVICES

441—83.9(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

DIVISION II—HCBS ELDERLY WAIVER SERVICES

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

DIVISION III—HCBS AIDS/HIV WAIVER SERVICES

441—83.49(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, an appeal may be filed with the department.

DIVISION IV—HCBS MR WAIVER SERVICES

441—83.69(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.

The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2)*"j."* **If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department pursuant to rule 441—83.69**(249A).

DIVISION V—BRAIN INJURY WAIVER SERVICES

441—83.89(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or consumer is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.

The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2)*"j."* If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department pursuant to rule 441—83.69(249A).

DIVISION VI—PHYSICAL DISABILITY WAIVER SERVICES

441—83.109(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

83.109(1) *Appeal to county.* Rescinded IAB 2/7/01, effective 2/1/01.

83.109(2) *Reconsideration request to IME medical services unit.* After notice of an adverse decision by the IME medical services unit on the level of care requirement pursuant to paragraph 83.102(1)*"h,"* the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by the IME medical services unit by sending a letter requesting a review to the IME medical services unit not more than 60 days after the date of the notice of adverse decision. Adverse decisions by the IME medical services unit on reconsiderations may be appealed to the department pursuant to 441—Chapter 7.

a. If a timely request for reconsideration of an initial denial determination is made, the IME medical services unit shall complete the reconsideration determination and send written notice including appeal rights to the Medicaid applicant or recipient and the applicant's or recipient's representative within ten working days after the IME medical services unit receives the request for reconsideration and a copy of the medical record.

b. If a copy of the medical record is not submitted with the reconsideration request, the IME medical services unit will request a copy from the facility within two working days.

c. The notice to parties. Written notice of the IME medical services unit's reconsidered determination will contain the following:

(1) The basis for the reconsidered determination.

(2) A detailed rationale for the reconsidered determination.

(3) A statement explaining the Medicaid payment consequences of the reconsidered determination.

(4) A statement informing the parties of their appeal rights, including the information that must be included in the request for hearing, the locations for submitting a request for an administrative hearing, and the time period for filing a request.

d. If the request for reconsideration is mailed or delivered to the IME medical services unit within ten days of the date of the initial determination, any medical assistance payments previously approved will not be terminated until the decision on reconsideration. If the initial decision is upheld on reconsideration, medical assistance benefits continued pursuant to this rule will be treated as an overpayment to be paid back to the department.

DIVISION VII—HCBS CHILDREN'S MENTAL HEALTH WAIVER SERVICES

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). An applicant or consumer may obtain a review of the IME medical services unit's level–of–care determination by sending a letter requesting a review to the IME Medical Services Unit, P.O. Box 36478, Des Moines, Iowa 50315. If dissatisfied with the IME medical services unit's review decision, the applicant or consumer may file an appeal with the department in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code section 249A.4 and 2005 Iowa Acts, chapter 167, section 13, and chapter 117, section 3.

Iowa Protection and Advocacy

950 Office Park Road, Suite 221
West Des Moines, IA 50265

"A federally funded program to defend and promote the human and legal rights of Iowans who have disabilities and mental illnesses."

515-278-2502 (Voice) • 515-278-0571 (TTY)
1-800-779-2502 (Toll Free) • 1-866-483-3342 (Toll Free TTY)
515-278-0539 (Fax)